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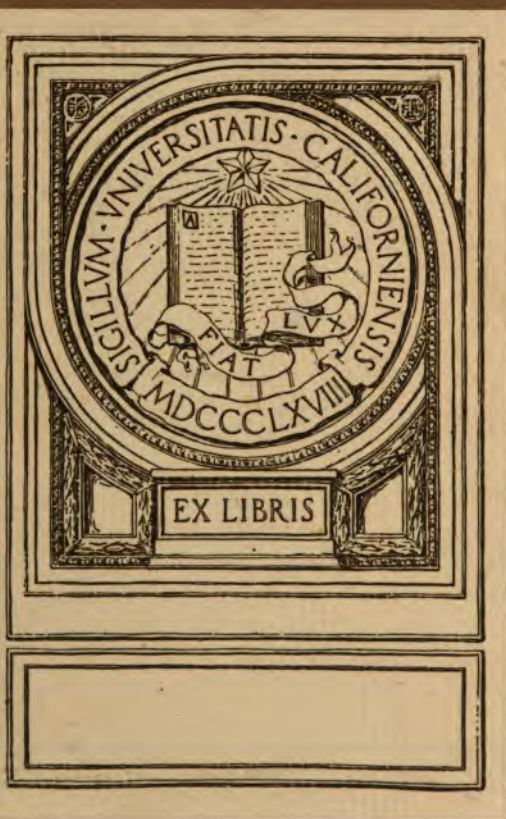
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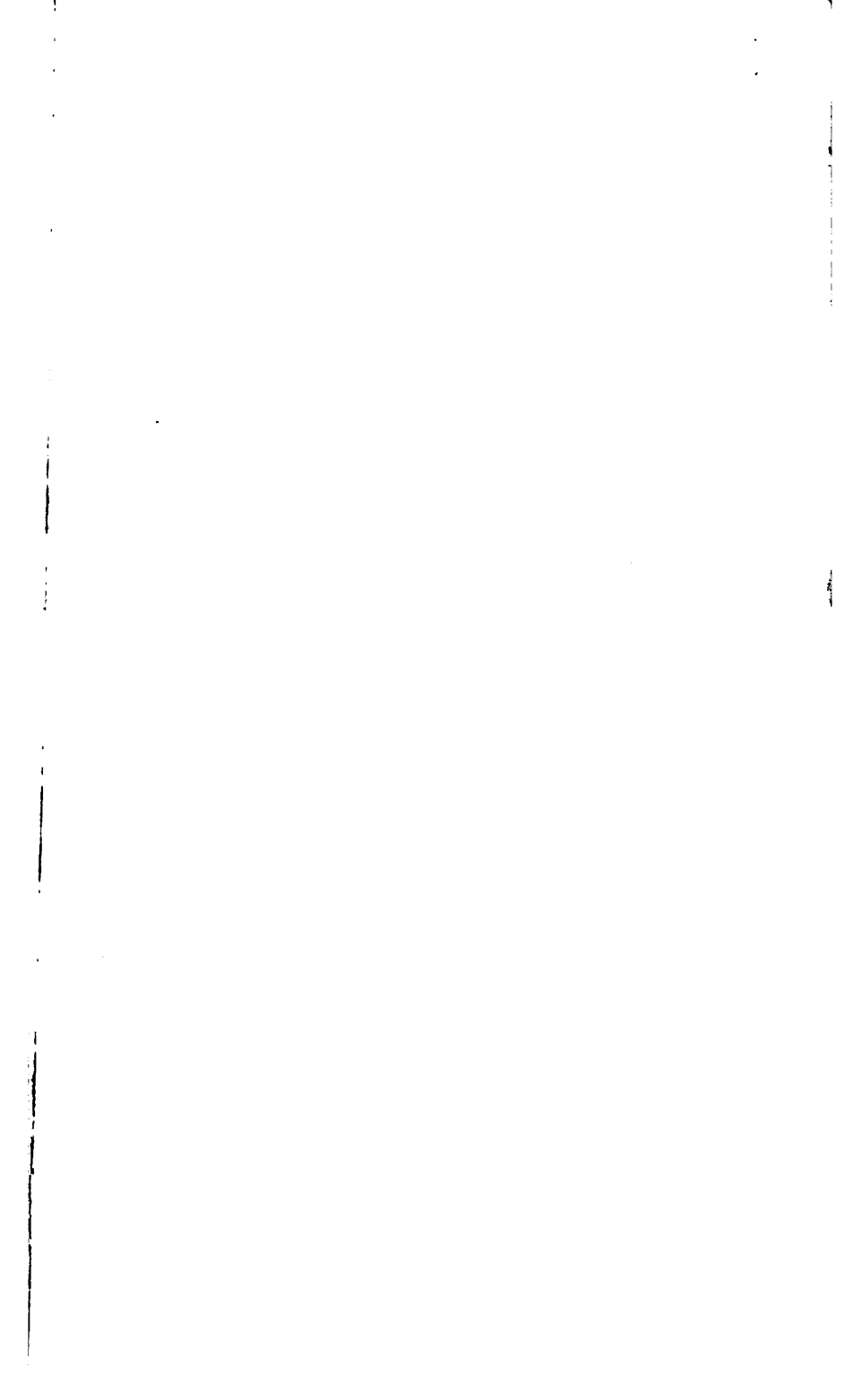
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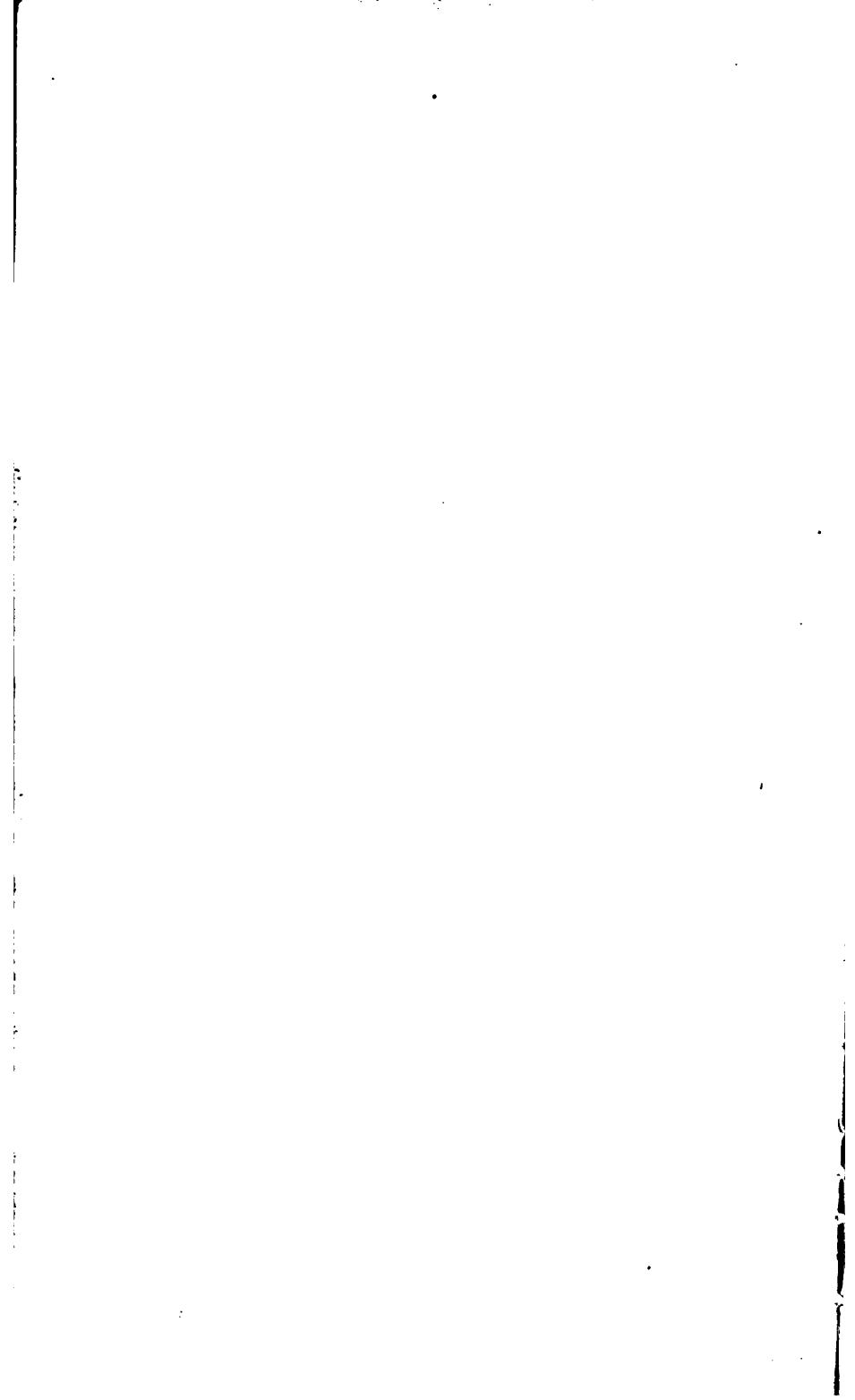
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The Government of England.

National, Local, and Imperial

By

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United States," "The Life of Henry Laurens."**



**G. P. Putnam's Sons
New York and London
The Knickerbocker Press**

1917

28 May '8

JN 231
113

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372371

NO. 1000
SERIALS

The Knickerbocker Press, New York

To
S. A. W.,
HEAD OF THE HOME DEPARTMENT,
THIS LITTLE BOOK IS DEDICATED
BY
THE PERMANENT UNDER-SECRETARY

372371

A land of settled government,
A land of old and just renown,
Where freedom slowly broadens down
From precedent to precedent.

Tennyson.

A republic under the forms of a monarchy.

Montesquieu.

PREFACE

I have attempted to describe the English government as it is without distracting the reader with a long account of how it came to be what it is. Moreover, I have avoided the common habit of first describing the government as it is supposed to be in theory and then following this with an equally detailed account explaining that it is not really this, but something very different.

The reader will observe too that I have all along kept in mind the resemblances and contrasts between the government of England and that of our own country, not only because of the interest in such a parallel, but because of the practical lessons which it supplies.

I hope that the book may find a serviceable place in college classes where the time at command, as is frequently the case, is too limited for an extended treatment of so large a subject as the British government. The general reader desiring a brief, untechnical account of the British government will also doubtless find it a convenient handbook.

I wish to acknowledge my obligations to President Henry N. Snyder, of Wofford College, Professor J. A. Tillinghast, of Converse College, Doctor W. W. Carson, of Depauw University, and Professor Frank G. Bates, of Indiana University, for their criticism of my manuscript and their many helpful suggestions, and to my father for his kindness in reading the proof.

D. D. W.

WOFFORD COLLEGE, SPARTANBURG, S. C.

December 30, 1916.

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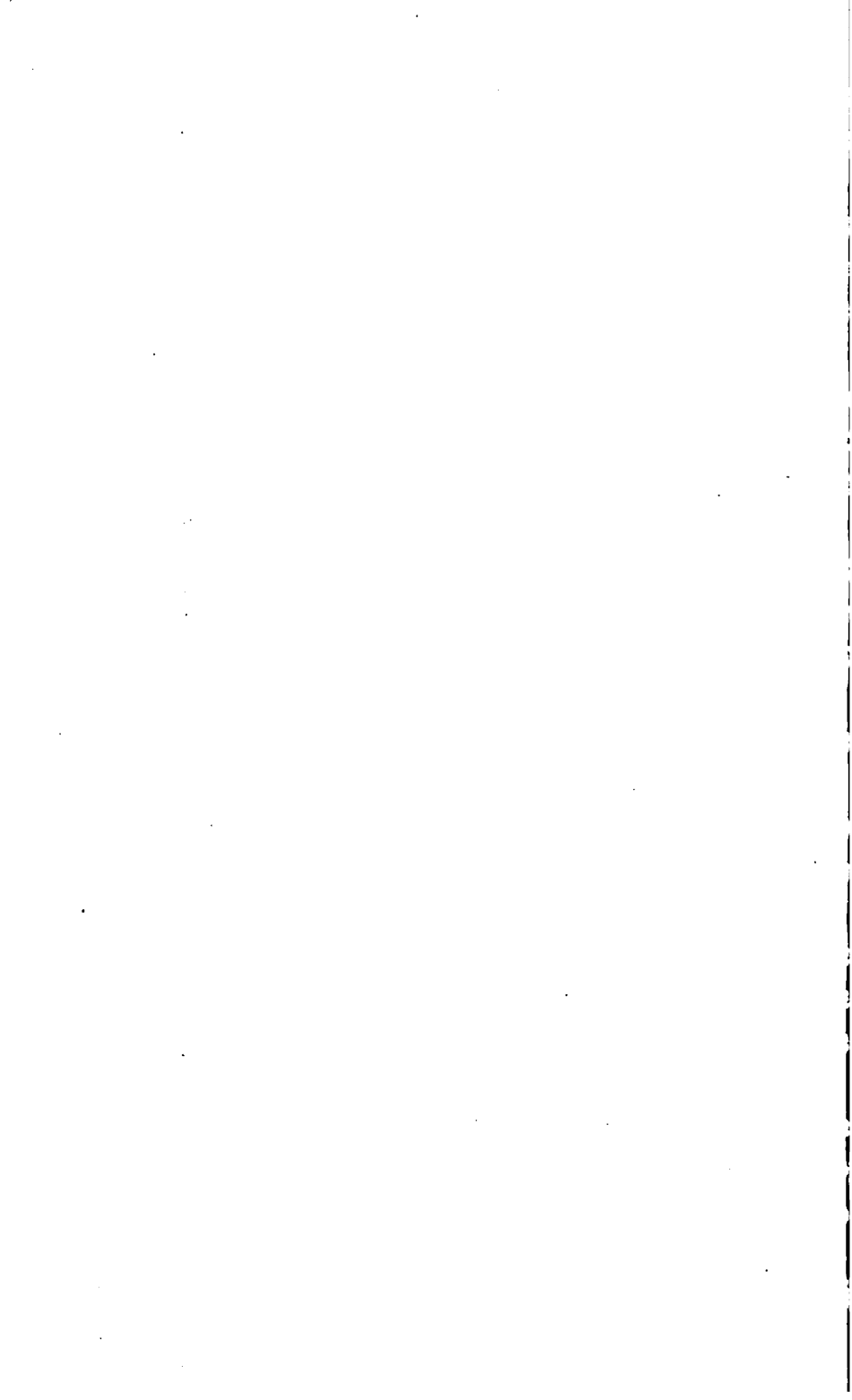
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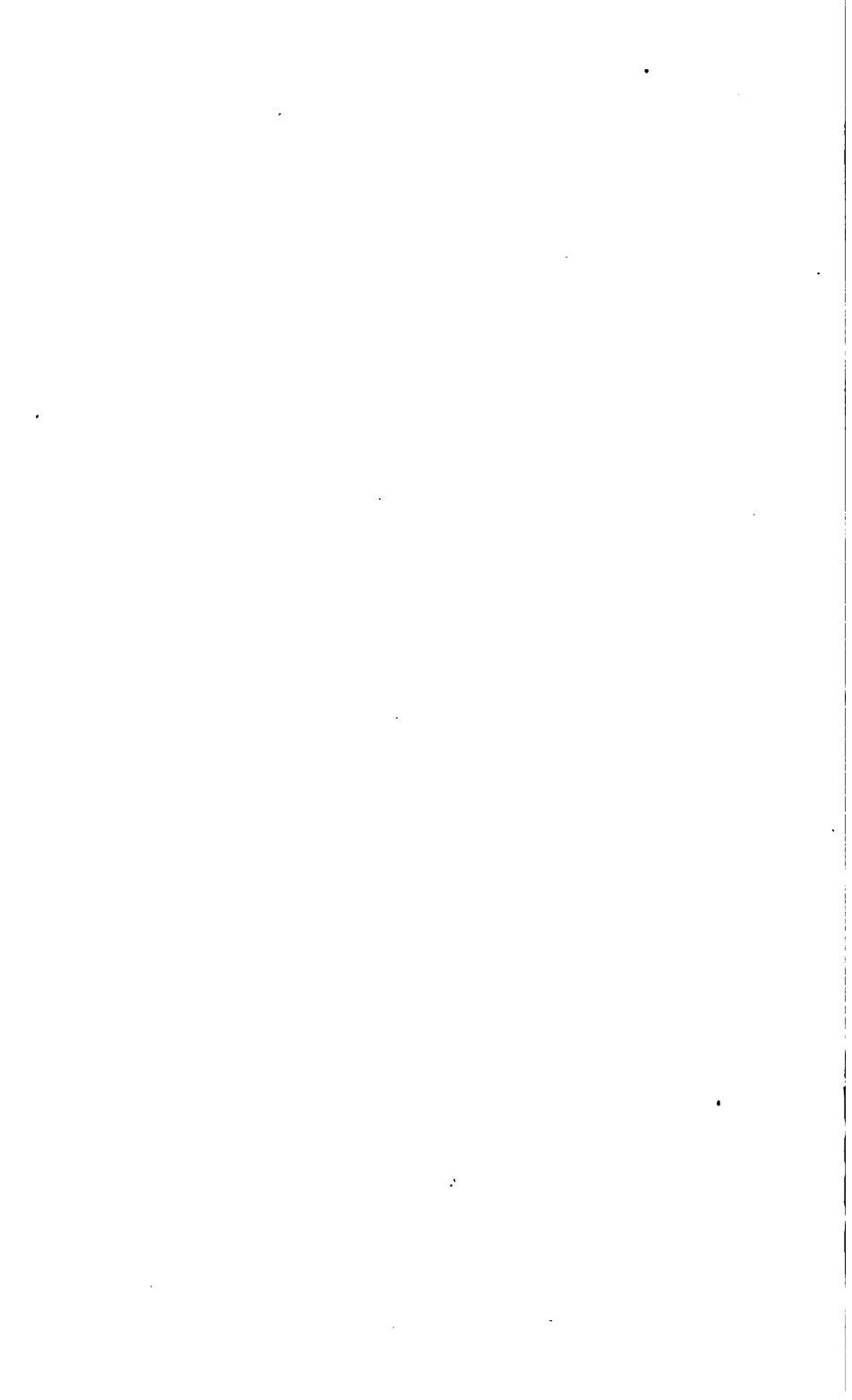
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The English Government



Book I. The Central Government

PART I. THE LEGISLATURE

CHAPTER I

THE ENGLISH CONSTITUTION

England's Contribution to Government. Each of the great nations of history is marked by its own peculiar qualities and has accordingly made a contribution to the world's civilization different from that of other nations. Perhaps the most valuable of the distinctly English contributions to modern civilization is popular constitutional free government. Even nations antagonistic to the English in other respects have copied their free institutions and practical political principles to such an extent that we may say that the larger the degree of freedom which a nation enjoys, the more closely will we find that

4. The Legislature

its government has been modelled after that of England.¹

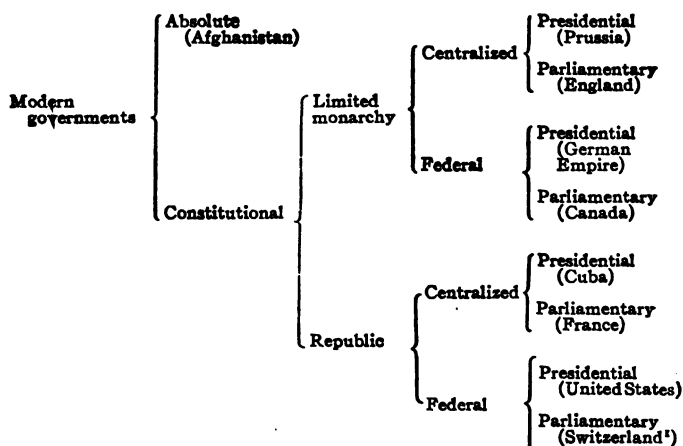
Varieties of Government. Although practically all modern free governments are organized directly or indirectly in imitation of that of England, they are not mere slavish copies, but are rather adaptations to meet their own specific conditions, without inconveniencing themselves with unessential or even undesirable features which would not be suitable to their circumstances. Hence among the self-governing countries of the world there are varieties of institutions, differences of method, and degrees of freedom. In order to make this clear, let us use a diagram, with illustrations drawn from various countries. The governments of the world may be grouped in classes as shown on page 5.²

While it might be possible to place every existing government under some heading of this table, we must admit that it would require some forcing; for many are in such a stage of their development as not to be decidedly one thing or the other. A class-

¹ "England in the nineteenth century has served as a political model for Europe. The English developed the political mechanism of constitutional monarchy, parliamentary government, and safeguards for personal liberty. Other nations have only imitated them."—*Seignobos*.

² Based on the table in Leacock's *Elements of Political Science*, 120.

ification to be of any value must be based upon the nature of the things classified. This table seeks to show what is most characteristic, and to indicate at a glance, without confusing and cumbersome details, the broad resemblances and differences of the various governments of the world.



Absolute Governments. Let us understand the terms of our table, beginning with the most general classes and going down to the particular country. First, an absolute government means one in which there is a monarch (king, emperor, czar, duke, khan, shah, or what not) whose will is law. The acts of the government are done by his command, and not

* But note that, though the Swiss executive must yield to the will of the Legislature when outvoted, it does not resign, but simply follows the expressed will of the Legislature.

by the deliberation of the people or their elected representatives. There are, of course, many tribal or national customs which he is obliged to observe; and also he is liable to be murdered or deposed if he uses his authority with too great disregard for the rights and interests of any influential element of the people. But so far as there are choices or orders or the passing of laws, they are his decisions, orders, or laws.

Constitutional Governments. In describing all governments that are not absolute as being constitutional, we use a term which covers countries of widely differing degrees of freedom. We only mean that in all these there is some effective check upon the mere will of the ruler and that the people have some voice in their government.

A constitutional government may have at its head either an hereditary monarch or an elected president. Its degree of freedom depends on whether the people are the real law-makers, and not on the way in which the chief executive is placed in office. For instance, the hereditary limited monarchy of England is immeasurably more free than the elective republic of Mexico. Hence by a limited monarchy we mean one in which the monarch must rule in obedience to law and is in fact as well as profession only the first servant of the state. By a republic we mean a country which periodically elects its

chief ruler. These are simply two forms of the large class known as constitutional governments.

Centralized and Federal Governments. Let us take up the next subdivision. Either a limited monarchy or a republic may be either centralized or federal. By centralized we mean that all authority is derived from the central government, or the consolidated nation, and that any local government may be changed or disestablished or its acts controlled by the central power. That is, the entire body of the nation can, through its central government, do anything it chooses, and the local subdivisions have no powers or rights that are reserved from interference, control, or destruction by the rest of the country. The limited monarchy of England is such a centralized government, and so is the republic of France. One is a centralized limited monarchy; the other, a centralized republic, and both are free, self-governing, and constitutional.

The United States, on the other hand, is a federal republic, and the German Empire is a federal limited monarchy; that is, these countries are made up of States, each of which has its rights which the central government must respect. Matters of national interest are under the control of the federal, or national government, but matters concerning only one State or its people are under the control of the government of each State and cannot be touched by

the central authority. The federal form of government is suited to large countries whose various sections differ in traditions or local conditions, and centralized government for small countries all of whose sections are very similar. Indeed, the people of a very large country could hardly preserve their freedom under any except a federal form of government; for they would be practically deprived of their liberties either by the impossibility of a central legislature's finding time to discover and attend to the varying needs of vast and widely separated regions, or through mere indifference to the rights of localities that were not large enough to compel attention.

Presidential and Parliamentary Governments.

The last division is into presidential and parliamentary governments. The fact that the head of the state is a president does not necessarily indicate that the government is what for our present purpose we call presidential. The term is adopted from the United States and means that the chief executive has powers and independence similar to those of the American President; that is, he is elected independently of the legislature and continues to hold office to the end of the term for which he is chosen, no matter whether the legislature approves of him and his policies or not, and further that he possesses the reality of executive power. Parliamentary govern-

ment means, however, that the real executive officers are given their positions because they are favoured by the legislature (though usually they are not formally elected by it) and must resign if they cannot induce a majority in the popular branch to vote for their policies. Parliamentary government is thus one in which the legislature is the dominant authority that makes or displaces the executive. England is the typical example of this form of government, and its name is derived from her Parliament.

Thus by reference to our table we see that England is a parliamentary, centralized, constitutional, limited monarchy; while the United States is a presidential, federal, constitutional republic. They fall into the same class only in being constitutional, or free; but this is of more significance than all the other classifications; because where the people are really free to govern themselves, the forms which they choose to use, though a matter of importance, are entirely secondary to the fundamental fact of freedom.

Written and Unwritten Constitutions. There is another difference between states, one which we have not indicated in our table, that is, between those which have a written and those which have an unwritten constitution. Despotie countries, generally speaking, have no written constitutions; but among free countries there are none that are without

them except England and Hungary, which have what is known as the unwritten constitution.

We are familiar with the written constitution from our knowledge of the Government of the United States, the best example of that form of government. That is to say, in the United States (and in all free countries, except England and Hungary, it is more or less the same) there is one legal document, adopted at a particular time, which lays down the organization and authority of the various departments and officers of government, grants them certain powers, and denies them others. This is the fundamental, or supreme, law and must be obeyed by the legislature, president, king, and judges. At least, all officials are sworn to obey it, but in very few countries besides the United States is there an effective method of restraining legislative or executive acts that are contrary to the constitution. The existence of a written constitution, however, is of little value unless the people have the spirit and power of freedom; for there are countries with elaborate written constitutions which have not a tithe of the freedom of others whose constitutions are what we call unwritten.

England's Unwritten Constitution. England furnishes the great example of the unwritten constitution. That is to say, her constitution is not written in any one document, and parts of it have grown up

by custom and have never been formally adopted by any governmental body or court. Let us, then, enquire, What is the constitution of England? It consists of three elements: First, *great statutes*, or *acts of Parliament*, in which from time to time have been embodied the fundamental liberties of Parliament and people, such as Magna Charta, the Bill of Rights, the Habeas Corpus Act, and the laws establishing the well-nigh universal right of adult males to vote. Some of these laws were exacted by the nation in arms against tyrannical kings or by the masses of the people in threatened insurrection against the aristocracy, amounting in effect to political revolution. Most, however, were adopted after unusually serious deliberation in times of crisis, but without popular disorder.

But it should be understood that these great constitutional statutes, or acts of Parliament, are not marked in any way or treated by the courts as of any different character from ordinary laws. They are recognized as the basis of the constitution simply by common consent. It is sometimes said that Parliament can repeal Magna Charta or the Habeas Corpus Act by the same process as that by which it provides for building a bridge across the Thames or combating the cattle tick. While this is formally true, it is really misleading; for as a matter of fact no fundamental change in the great laws recognized

as a part of the constitution can be made without such a prolonged and obstinate opposition that the nation would be fully roused to the importance of the issue. It is even becoming an established custom, itself a part of the constitution, that no important law of the kind called constitutional should be adopted without first having been fully discussed and then passed upon by a new Parliament elected principally for that purpose.

Second, a part of the English constitution consists of fundamental property and personal rights developed through centuries by the courts and constituting the most important part of the *common law*.^{*}

Third, the English constitution consists in part of a number of *political customs* which are obeyed as though they were law, but which are not law and would not be enforced by the courts. These are the customs, or conventions, of the constitution, as,

^{*} Statute law is law passed by Parliament or legislature. Common law did not originate by being passed by any legislature, but consists of rules and customs which have been observed by the people and enforced by the courts for centuries, and is in some of its parts in fact older than Parliament itself. As the old writers put it, it hath been law and custom since the memory of man runneth not to the contrary. Common law has to do with the fundamental relationships of life, as, *e.g.*, the right of a parent to discipline his child, or of a person to protect himself from assault. The ordinary crimes are common law crimes. *E.g.*, before there was any Parliament, men punished murder, house-burning, and theft. Common law is often changed by statute law, as, *e.g.*, abolishing a man's common law right to whip his wife. See pages 188 and 189.

e. g., the rule that the Prime Minister must be the leader of the party having a majority in the House of Commons, and that the King is obliged to sign any bill that passes both houses of Parliament.

Summing up, we may say that the English constitution consists of certain great fundamental statutes; of a body of rights and rules grown up in the courts as a part of the common law, and of a number of rules governing the conduct of Ministers, King, and Parliament which are so generally recognized that any man or group of men would find it impossible to disregard them. The fact that such a complicated and delicate organism can persist amidst the fierce collisions of politics is largely due to the fact that the English government has been developed and directed by a governing class, who recognize the necessity of playing the game according to the rules, and entertain no extreme or violent policies for the accomplishment of which they would be willing to upset the machinery of the state. What might be the effect of the general participation of the masses of the people in the administration of the government upon the structure and character of the English constitution, suggests some very serious questions.

Ease of Amending the English Constitution. It is evident that under such a system changes in constitutional custom may take place almost unnoticed,

and that even fundamental constitutional laws may be altered much more easily than under the written Constitution of the United States, as only a majority vote in Parliament is necessary. Hence the English constitution is spoken of as flexible and ours as rigid.

Americans understand that to alter their constitution the amendment must be formally proposed, voted on in a special way, and carried by a larger majority than is required for an ordinary statute. There is no special procedure in amending the constitution in England; though it is of importance to remember, as explained above, that it is coming to be a recognized custom that no fundamental change in the law of the constitution should be made without its having been thoroughly discussed and a new Parliament's having been elected on that issue. A certain formality and deliberation are thus secured which tend to avoid ill-considered, hasty change. And let us notice, too, that the gradual solidifying of this very proper idea into a generally recognized rule itself illustrates how the English amend the custom, or conventions, of the constitution.

We understand, then, that when an Englishman denounces a proposed statute as unconstitutional, he does not mean, as would an American, that it would be null and void even if enacted by Parliament, but that it is contrary to the existing constitutional

laws and customs which ought to be regarded as sacred.

Fusion of the Departments. Perhaps as striking a feature of the English government as its unwritten constitution is the fusion of the great departments, the legislative, the executive, and the judiciary. To exhibit this by way of contrast, let us take the system of the United States. In this country, in both the State and National governments, a very thorough division of governmental powers is made by assigning the making of the laws to the legislature, their enforcement to an executive, irremovable by the legislature,^{*} and their interpretation and application in cases between individuals to the judiciary, similarly independent. This characteristic of our government, the main feature of which is the rigid separation of the executive and legislative branches, is largely due to a failure of the framers of the American system to perceive the real nature of their English model.

In 1787, the King was theoretically, as he still is for that matter, the independent executive branch of the government; whereas, as a matter of fact, he had been for more than sixty years gradually losing his authority through its absorption by the Cabinet, which had been in the meantime becoming in effect the executive committee of the House of Commons.

^{*} Except of course, on conviction upon impeachment.

The extent to which this process had gone and its ultimate tendencies were by no means realized even by many thoughtful observers, and consequently, the theoretical separation of the executive, legislative, and judicial departments was being very much praised as still a reality, especially by certain writers in England who desired to magnify the power of the King and save what remained of it from the encroachments of the Commons, and for the opposite reason by others in France who wished to break down the royal despotism then dominant in that country by emphasizing the necessity of an independent legislature. These theories, coupled with the fact that as colonists the Americans had been accustomed to a strong executive, the royal Governor, who was independent of the colonial Assembly, led our forefathers to arrange for the most thorough separation of the three departments to be found in history, with the result that the political institutions of the two great branches of the English speaking peoples, inheriting the same political traditions, were from that time marked by a very decided difference.

In England the absorption of the royal power continued to such an extent that the control over the entire executive passed into the hands of the House of Commons. Thus the nation from whom we copied our system of "checks and balances"

as supposedly the only means by which tyranny could be prevented has almost wholly cast aside all checks and balances, and seems to have proved, up to the present time, that the popular will, among a highly civilized people notably gifted in public self-control and following the leadership of a patriotic governing class, is itself a sufficient safeguard to individual and national liberty.

Even the judiciary are not independent of control by Parliament; for they may be discharged without any reason assigned at the request of a mere majority vote of the two houses, and Parliament may even, as it has occasionally done, direct them to change their interpretation of the law. As a matter of fact, the judges are as free and unintimidated in England as in the United States, and Parliament would never interfere in the management of an individual case.

The nature and extent of the fusion of governmental functions will appear as we study the relations of the Cabinet and the House of Commons, when we shall perceive that this second fundamental characteristic of the English Government is mainly due to the other, the absence of a written constitution.

CHAPTER II

PARLIAMENT

Place of Meeting. The body which rules over the British Empire has been called not only the Parliament of the United Kingdom,¹ but "the mother of Parliaments," since from it have sprung by descent or imitation, direct or indirect, the scores of legislatures all over the world through which men govern themselves.

Parliament meets in a vast Gothic building in the heart of London covering an area of eight acres of ground, and called The Houses of Parliament, or the New Palace of Westminster. Immediately to the west across the open square called the Old Palace Yard lies Westminster Abbey, containing the remains of many of the famous characters in the

¹ It was the English Parliament until 1707, when England and Scotland were united to form the one kingdom of Great Britain. When Ireland was joined to Great Britain by the act of Union in 1800, the name was changed to the United Kingdom of Great Britain and Ireland. The word England is often used when Great Britain or the United Kingdom would be more accurate.

nation's history, in contemplating whom Holmes exclaimed of England:

One half whose dust has walked the rest
In heroes, martyrs, poets, sages.

Though the Abbey reaches far back into the Middle Ages and the Parliament building is less than a century old, they both, with their soaring pointed architecture, call up England's past. The innumerable epoch-making events which have centred around this place for the better part of a thousand years make it one of the great historic spots of the world.

Besides the halls of both houses, there are in the Parliament building many offices and a number of official residences. The chamber of the Commons lies in the northern and that of the Lords in the southern end. Both are so small as to seat only about half the members, the others having to stand or crowd into the gallery when important business draws a large attendance.

Unlimited Power of Parliament. "The High Court of Parliament" strictly speaking consists of three branches, the King, the House of Lords, and the House of Commons; though, on account of the disappearance of the King's authority, we generally think of its including only the two houses. It is the supreme legislature over the entire British Empire and has unlimited legal authority to pass any

law, good or bad, to bind all parts of the Empire or any part separately.

The better to realize the two aspects of this unlimited authority, let us contrast it with the powers of the American Congress. By the Constitution of the United States, the authority of Congress is limited in breadth, so to speak, by the rights of the States. That is to say, certain broad fields of legislation are closed to it and reserved for State action. Second, the authority of Congress is limited in height, so to speak. That is to say, many rights are placed above the power of Congress to touch, because it is not considered just that any government should be allowed to restrain the freedom of the citizen in these particulars.

To shift our figure to England, the authority of Parliament is without limits in breadth; for every legislature of a distant colony, an English county, a Scottish town, or an Irish parish exists by its creation or consent, has no reserved rights which it must respect, and may by it be legally abolished. Nothing could better illustrate the character of a centralized, consolidated state, so different from the federal system of the United States. Likewise the powers of the British Parliament are unlimited in height; for there are no rights of the citizen on which it may not lay its hand to restrict or even destroy. No written constitution forbids it to proclaim martial

law, to deny the right of trial by jury, or openly to build up one section of the country at the expense of another by exempting it from taxation or forbidding rival regions from competing with its industries.

We must not be misled by the description of this legally unlimited and potentially despotic power. Despite the apparent contradiction, this all-powerful Parliament is as truly a limited, constitutional government as any in the world; for it is bounded by the conservatism and free spirit of a people wonderfully gifted and long practiced in the art of political self-control. Any gross violation of the people's interests would lead to the overthrow of the offending representatives, and serious disregard of the rights of the colonies would lead to their rebellion, as England learned to her sorrow in 1775.

Disappearance of the Power of the King. The three factors legally composing Parliament vary greatly in importance and power, and have varied in the past. Under mighty sovereigns like William the Conqueror, the King really made the laws "by and with the advice and consent" of his Great Council, as what was later to develop into Parliament was then called; and in fact he often made laws without the advice or consent of anybody at all. But as the great nobles in the House of Lords became more concerned with the nation's rights and the House of Commons grew in independence

and influence, the advice and consent became so real that the King was forbidden to proclaim anything law that the houses had not passed. The influence of the houses finally grew to be so great that their advice could not be ignored, and accordingly since 1707 no sovereign has ventured to reject any bill which has been passed by them; and it may now be correctly stated that the King has to sign any law that Parliament sends him.

Decline of the Power of the Lords. Not only has the power of the King declined as compared with that of the houses, but that of the Lords has sunk while that of the Commons has risen. After the Lords and Commons had together suppressed the power of the King, thus abolishing despotism, the Commons took away most of the power of the Lords, thus abolishing class rule and establishing democracy. For many years the House of Commons has been the driving wheel of the British government, and in future it is destined to be still more nearly the whole machine.

Supremacy of the Commons. This growth in power of the Commons has gone so far as to convert Parliament from a genuine two-chambered legislature to one in which the so-called upper house has been reduced to a mere "house of cautious revision." The fact that the original two-chambered legislature, copied all over the world and praised as the best

means of checking hasty and ill-advised action, should have now become so nearly a legislature of one supreme, unchecked house, only illustrates how governments as well as plants and animals must adapt themselves to new circumstances.

Since 1832 it has been recognized that if the Commons persisted in demanding the passage of a law that the people wanted, as proved by an election in which this was the principal issue, the Lords must yield and pass the bill. If they refused, the King, acting under the necessity of popular demand, would appoint in sufficient numbers new lords who would favour the law to pass it. As a matter of fact the creation of new lords has never been necessary; for when the Lords have seen that further resistance would be overcome in this way, they have yielded. But this was too cumbersome and allowed the Lords to block much needed legislation to carry which it was impracticable to be constantly employing such unusual means. Hence in 1911, Parliament passed an act making it possible in future for the Commons to pass any law without the consent of the other house. The Lords, whose consent was legally necessary, would of course never have submitted to a measure so considerably restricting their own power except under compulsion. And so it was; for after the people had repeatedly endorsed the position of the Commons, the King was obliged to force their

act of 1911

submission by the threat of creating enough new lords to pass it over their opposition.

The Parliament Act of 1911.¹ The terms of this revolutionary amendment to the English constitution, known as the Parliament Act of 1911, are as follows:

First, the Lords may not alter in any way a bill to raise money, whether by taxation, loan, or any other means, or to appropriate or expend in any way the public funds; and if they do not pass such a bill within one month of receiving it from the Commons, it shall be sent to the King for his signature and thereby become law without their consent. If a dispute arises as to whether any bill or clause of a bill concerns finance, the decision of the Speaker of the House of Commons shall be absolute and final.

Second, if the Commons pass any other bill in three separate sessions, with at least two years between the first and last passings, that bill, after allowing the Lords a month to consider, is sent to the King for his signature and becomes law without the consent of the Lords.²

¹ An account of the circumstances leading up to the Parliament Act of 1911 will be found at pages 91-4.

² The Parliament Act does not apply to private bills, *i.e.* bills referring to some particular person or locality, as, *e.g.*, the request of a certain town to be allowed to build its own waterworks, or to certain other bills of minor importance. In fact the services of the

The fact that these bills, like all others, must be signed by the King before becoming law is of slight significance. If he should refuse to sign, a resolution that his signature should be presumed, or some other means, would be devised to overcome this difficulty, just as in the case of the opposition of the peers.

During the past hundred years, the absorption of power by the Commons has so largely drawn political interest and influence away from the other house that the transfer of a man from the Commons to the Lords by reason of his succeeding to a title on the death of his father has arrested many a promising political career.

Control of the Commons over the Raising and Spending of Money. The supreme authority in the state has been attained by the Commons through their control over the government's income. True, in the long struggle there were other issues at stake and in any event it was almost inevitable that the majority should come to rule; and yet it is none the less true that it was with this weapon chiefly that the representatives of the people won their victory. Long ago it came to be an established principle of

Lords in considering private bills are recognized as very valuable. See Chapter VI, pages 68-9.

It makes no difference whether the second and third passings of a bill are by the same House of Commons as that which initiated the bill, or whether a new house has been elected since the first passage of the bill.

the English constitution that no one should tax the people except their elected representatives. Thus the Lords ceased to take any part in levying taxes, except merely to pass the bill as a matter of form, even though they were themselves also taxed at the same rate as other people, and, being very rich, paid correspondingly large amounts. This came to be regarded as one of the strongest customs of the constitution, and it is safe to say that the English people would rise up in civil war rather than surrender it. Whoever controls taxation soon comes to control the whole government; for he can take the position that unless his wishes are regarded in other matters, he will stop the whole machinery of government by cutting off the income.

Time of Meeting. The ancient statute requiring Parliament to meet once in three years long ago became obsolete through the adoption of two customs regarding the revenue and the army that make it necessary for it to meet every year. Parliament grants appropriations for one year only,^{*} and passes the law authorizing the King to maintain the army only for the same length of time; and hence the

^{*} Certain fixed charges, as interest on the national debt, the support of the royal family and of the courts of justice, and a few trivial items are provided by standing law which does not require annual enactment. These charges equal, in ordinary years, almost one fifth the total expenditures. See *Statesman's Year Book* for 1913, 43.

wheels of government would soon stop if Parliament were not summoned. They meet about the first part of February and remain in session until about the first part of August, with a recess at Easter and another seven weeks later at Whitsuntide. In extraordinary circumstances, they are assembled as the occasion requires, the date of meeting in all cases being fixed by the King, or more correctly, by the Prime Minister acting in his name.

"The height of the season" for society and business is not the winter, as in American cities, but May and June. Parliament being in the midst of its session, the nobility are in their London houses, and the capital is crowded with the brilliant social and political leaders of the kingdom. The most famous actors, singers, and musicians fill the theatres, and tourists from every quarter of the globe throng this the greatest city of the world.

Opening and Closing of Parliament. At the beginning of the session, the King goes in state, gorgeously apparelled and magnificently attended, from his palace in London to the Houses of Parliament. He takes his seat upon the throne in the House of Lords and a messenger is sent to summon the Commons. The latter stand in the rear of the hall, and the King reads "the speech from the throne," which has been written by the Prime Minister and revised in the Cabinet, outlining the program which

the Ministry intend to carry through.¹ The King then retires and the Commons withdraw to their chamber. At the conclusion of Parliament, the sovereign again appears in the same place and dismisses the assembled houses.

Proroguing and Dissolving Parliament. Only the King can call or dismiss Parliament; but in this, as in other respects, his authority is only that of Parliament itself expressed through the Ministry. This is a relic of the time when he really called it to give him advice or money, and sent the members home when he had got what he wanted. At the end of its regular annual session, its desire to go home having been signified, the King prorogues (*i. e.* adjourns) the body. If instead of a temporary adjournment, the service of its members is to be ended and a new House of Commons chosen, the King issues a proclamation, either at the time of closing the session or later, dissolving Parliament and naming the date on which a new House of Commons is to be elected.

If not sooner dissolved, Parliament would by law expire at the end of five years since the last election; but as a matter of fact, it is always dissolved and is never allowed to live out the full term for which it was elected.²

¹ In the absence of the sovereign, some high official reads the speech and formally opens Parliament.

² See pages 39 and 46-50.

CHAPTER III

THE HOUSE OF COMMONS

Membership. The House of Commons consists of 495 members from England and Wales, 72 from Scotland, and 103 from Ireland, making a total of 670.¹ The attendance, however, when the proceedings are dull is very small, frequently falling as low as 25 or 30; but the average is of course much higher; and when important votes or speeches are expected, the greater part of the members are found in their places.

Election Districts. The six hundred seventy members of the House of Commons are elected by single districts,² as are our Congressmen, with the exception that a few districts elect two members each. The

¹ The act for Irish Home Rule passed in 1914, but temporarily withheld from going into operation, reduces the number of representatives from Ireland to 42, thus leaving the total, after that act shall go into effect, 609. See Chapter XXVI.

² They are called parliamentary divisions; but I shall speak of them as districts as more natural for Americans, not to speak of the danger of confusion in the other term with "division" in another sense. See page 77.

population of the districts varies greatly. There is no attempt to have the districts of equal population. It is surprising, for that matter, to find how widely Congressional districts vary in population, on account of the necessity of following certain established boundary lines. The average population of a parliamentary district is about 60,000, which gives each member between a third and a fourth as many constituents as are represented by a member of Congress in the United States. Some districts contain less than a third of the average of 60,000 and a few about three times more than that. The proportion between the largest and smallest district is in fact almost fifteen to one.¹

The districts, or more properly constituencies, which elect members are of three kinds: *counties*, which elect 377 members; *boroughs*, which elect 284, and *universities*, which elect 9.²

County Members. It would seem more correct to speak of country rather than county members; for the member is no longer elected by the whole county, except in the case of a few small ones, but by a small division of the county set off for this

¹ Lowell, i., 200. Compare the United States Senate, where the Senators from New York represent one hundred and twelve times as many people as those from Nevada.

² The membership of the House of Commons being reduced about one tenth by the Irish Home Rule act, these figures will be changed in about that proportion when that law goes into effect.

purpose. Places of less than fifteen thousand inhabitants are, with a few exceptions, treated as country and go along with the rural region by which they are surrounded.

Borough Members. The parliamentary borough is, roughly speaking, a city of over fifteen thousand inhabitants—usually much larger—which elects its own member or members to Parliament. If it is a small city, it elects as a whole its one member; if a large city, it is divided into as many separate districts as the number of members to which it is entitled.* There are many boroughs, or cities, however, which have their regular city government, but simply form part of a country district for electing a member of Parliament.

University Members. Lastly, the eight leading universities of the United Kingdom² send nine members to the House of Commons, several sending two each, several one, and in several cases two universities combining to elect one member. These members are elected by the graduates of the university, and it is a fact that the constituency which has the right

* The "city" of London, *i. e.*, the square mile in the heart of the metropolis, as one district elects two members. The rest of the metropolis is divided into single member districts like any other large city.

² After the Home Rule Act goes into effect, two Irish university members will sit in the Irish Parliament, but the two Irish university representatives will not then be among the forty-two Irish members of the Imperial Parliament.

to vote for one of these members is more numerous than the voters in a number of the smaller districts.

Reasons for County, Borough, and University Constituencies. The reason for assigning representatives to the cities, rural districts, and universities separately, instead of dividing the country uniformly into districts without attempting any distinction or grouping of urban and rural population, is that thus each of these differing interests is assured a fair representation. Otherwise it might happen that in times of political excitement one or the other of the elements might be shut out, virtually if not absolutely, by the one which was in the majority refusing to permit the election of any man not of their class of the population; and so a large element of the people would be deprived of all voice in the government. This could not happen to such a serious extent in a region, such as an American State or an English county, which contains many large cities and also extensive and vigorous farming sections; for in that case some cities are virtually independent election districts, through the control which they exercise over the districts in which they lie, and the rural population is sure to triumph in some sections. And yet even then there might be much ruthless overriding of the minority element in many quarters. To avoid these evils, several American States have adopted the English custom of setting off large towns

as separate election districts from the counties in which they lie.

The reason for allowing the university graduates to collect at their *alma mater* and elect a member or members is to secure definite representation for the highly educated and conservative element in the country. As the general influence of this class upon the thought of the country is far greater than any that can be exercised by their special representatives, it can hardly be supposed that this arrangement accomplishes much beyond giving a few seats to the Conservative party.

The Franchise. The parliamentary franchise, *i. e.* the right to vote for members of the House of Commons, is not so wide as that for the election of local officials, for it includes no women, as does the latter, and is somewhat stricter as to the qualifications for men. The movement towards manhood suffrage, however, is quite strong, as is also that for woman suffrage for all elective positions.

The law defining the qualifications for voting are quite complex; but the following summary is sufficient for our purpose: In boroughs, every man, not a lord, may vote who, either as owner or tenant, occupies as head of a household (though he himself might constitute the entire household), any house, flat, room, or set of rooms in the city constituting a separate family abode; and also every man who

occupies as a lodger a room or rooms of an annual rental value of at least £10. Hence we may adopt the usual brief statement that in the boroughs all "occupiers" and "£10 lodgers" may vote for members of Parliament.

In the counties it is more complex. There all "£10 lodgers" may vote, and also the following: all men who own land of a certain small value, and all men who occupy as owners or tenants quarters or lands on which local taxes are paid.

We may say roughly for the whole United Kingdom, that the parliamentary franchise is possessed by all men who own land or occupy a home rated as a separate dwelling, either as owner or tenant, or rent as lodgers quarters worth £10 a year.¹

Three further requirements apply to all classes of voters, *viz.*: they must be twenty-one years of age and must have paid all taxes due upon any land or houses the ownership or occupancy of which secures their right to vote, and all occupiers or lodgers must

¹ Dwelling or residence does not necessarily mean a complete building; a tenement house might include under one roof dozens of "residences."

Two more points are to be remarked: The "county" districts include many considerable towns; hence particularly the qualification for lodgers in the counties. Also the voters in the "county boroughs," *i. e.* cities having the powers of independent county governments (see page 230 below), have the same qualifications as in the counties. The qualifications for voting in Scotland and Ireland are similar, though not identical, to those in England. For details, see *Statesmen's Year Book*.

have occupied the same quarters for a full year previous to the 15th of July preceding the election at which they propose to vote.

The law is enforced by requiring that the voters shall be registered every year. The registration officers will place no man's name upon the list who does not possess the legal qualifications.¹

Members not Necessarily Residents of their Districts. A fact strange to Americans is that there is no rule, custom, or even general feeling, that the member should be a resident of the district by which he is elected. In fact about half of the members of the House of Commons are not residents of their districts. In the United States a member of Congress is required by law to be a citizen of the State, and by custom to be a resident of the district from which he is elected. Ours is the only great self-governing country in the world which thus limits the

¹ *Plural voting.* As the qualifications for voting require the owning or renting of property in a city or district and say nothing as to one definite legal residence, it is evident that a man might qualify to vote in several different parliamentary districts, as, *e. g.*, by renting a store in a city, living in the nearby country, and keeping a summer cottage at the seashore, or being a university graduate. That was the practice before 1914, which was recognized as having an important influence in close elections. There had been for many years widespread opposition to it as undemocratic, and in 1914 it was abolished by the first law "enacted by the King's most Excellent Majesty (as the legal expression is), by the advice and consent of the Commons" as provided under the Parliament Act of 1911. It is estimated that 500,000 voters, mostly Conservatives, were affected. The plural vote by university graduates was included in the abolition.

right of the people to get the best services wherever they can find them and refuses to trust them to choose their servants from whatever part of the State or country they please. Or to put it in a way which better indicates its significance, we are the only people who are so absorbed in local politics and "pull" as to prefer an inferior resident to a highly superior fellow-citizen from just across the river or the county line. Consequently men whose services are greatly needed in Congress by their entire party, and perhaps by the whole country, are sometimes kept out of public life by happening to live in a district which for purely local reasons does not choose to elect such a representative. The same is true regarding the State legislatures and the counties within the State, and, except where the commission form of government has been adopted, even of the city councils and the wards within the city. In other countries able men who live in districts where the majority is opposed to them may be secured for the public service by being elected from districts which agree with them in politics, but have no candidate within their borders of such eminence and ability.

Salary. In modern times members of the House of Commons did not receive salaries until 1911; but in that year it was enacted that they should be paid the small sum of £400 annually. This was done because it was considered contrary to democratic

principles to deprive a poor man of the opportunity to serve by reason of the requirement that the member should bear his own expenses; but the small salary provided really makes very little difference; for not only is it insufficient to support the member in London, but it is entirely inadequate to enable a poor man to stand the heavy expenses of the campaign and the social and charitable obligations which it is almost impossible for a member of Parliament to escape. The distinction of belonging to the House of Commons costs the ordinary member at least \$15,000 to \$20,000 a year.¹

The Speaker. The presiding officer of the Commons is the Speaker. He is chosen by each newly elected House of Commons and is formally approved by the King, though the day is far past when the sovereign would think of disallowing whomever they should choose. The Speaker's term lasts as long as that of the house which elects him, and it is customary to re-elect him, irrespective of the fortunes of parties, as long as he desires to serve. From the moment of his election he becomes an impartial, non-party man, never voting except to break a tie,

¹ Cf. Lowell, ii., 48-49. £5000 a year is often spoken of as necessary. The £400 salary was established mainly at the demand of the labour unions, whose former practice of supporting Labour Party members, of whom there are in 1911 about fifty, was checked by the courts. Labour Party members are supposed to deny themselves the social ambitions and the "nursing" of constituencies which make such drafts upon others.

and presides with a fairness and dignity which have earned his office the highest universal respect. He receives a salary of five thousand pounds a year, a residence in Westminster Palace, and when he chooses to retire, is made a peer.

Disqualifications. In order to check the influence of the King, it was enacted two hundred years ago that royal officials should not be allowed to sit in the Commons. But this does not apply to army and navy officers, nor to the holders of the great offices in the executive department filled by the King's Ministers. On the contrary, the custom of the constitution requires that the Ministers must be members of Parliament, and if this were not so, the English system of government could not exist. With the exception noted above,¹ any adult male subject of the King from any part of the Empire may be elected to the House of Commons, except an English or Scotch Lord or an Irish Lord who has been elected by his fellow Irish Lords to sit for life in the House of Lords of the United Kingdom. If the heir to a peerage is a member of the House of Commons when his father dies, his membership immediately ceases without any ceremony whatever, and he is not permitted even to complete any business in the house upon which he might have been engaged.

¹ And a few others not important; *e. g.*, clergy of the Scotch and English establishments, Catholic priests, and certain criminals.

In view of the fact that the power of the House of Lords has been so diminished¹ that it can no longer be regarded as an "estate" of the realm in the mediæval sense of a separate class absolutely protected by the organization of the state against the encroachments of other classes, there appears no good reason for retaining the rule against any peer's being elected to the House of Commons. The Irish Home Rule Act recognizes this and makes all peers eligible to the Irish House of Commons. It is a strange thing in a democracy, founded on confidence in the people, to forbid the people to get their representative where they please. The third estate would have suffered sadly in the French Revolution if they had been protected against electing Count Mirabeau their representative.

Ministers in Parliament. The King's Ministers, then, are members of Parliament, and moreover they are the leaders of that body and, as will be later explained, they exercise a vast influence upon its action in passing laws.

Term, Dissolution, etc. The Commons are elected for a term of five years²; but, as will be explained later, they are always dissolved sooner; so that the average life of a Parliament has proved for many years past to be a little over four years.³ A dis-

¹ Cf. the Parliament Act of 1911, page 24.

² The term was seven years from 1716 to 1911. The term of the Parliament elected in 1911 was extended because of the Great War.

³ See page 41, table of the duration of Parliaments since 1837.

solution sometimes comes much sooner than this, however, long before the end of the term for which the existing House of Commons was elected; for if the Ministry find themselves in disagreement with the Commons and believe that the people will agree with them instead of with the Commons, they dissolve the existing house and call for the election of another.¹ Furthermore, it is coming to be recognized that, if a considerable number of bye-elections to fill the places of members of the house who have died or withdrawn and who were supporters of the Ministry go against the party represented by the Ministers, they should resign their positions or order a dissolution in order to give the people the opportunity to change the party in power if they really so desire. The Commons are thus the direct representatives of the people and as such are much the most powerful element in the government. Hence it is, as was explained in the preceding chapter, that they have the absolute control over bills to impose taxes or spend money, and can pass any law over the protest of the Lords by simply enacting it in three successive sessions in not less than two years.

Impeachments. Another special power possessed by the Commons alone is that of bringing impeachments against any executive or judicial officer of the Crown. The origin and method of operation of

¹ Cf. pages 46-50.

this powerful weapon of defence against tyranny are described on page 102, which might be read at this point as a part of this chapter. Though impeachment has not been employed in England for over a hundred years, and probably will never be used there again, it played its part in the long warfare against tyranny in former times. It has been rendered unnecessary by the law making judges removable on a request passed by a mere majority vote of both houses of Parliament, and the development of the modern system of Cabinet government, by which the Commons force the resignation of the King's Ministers as soon as they become objectionable, to say nothing of dangerous.

THE DURATION OF PARLIAMENTS SINCE 1837¹

Victoria's	1st Parliament	3 years,	9 months,	12 days
"	2d	5	11	4
"	3d	4	9	10
"	4th	4	7	1
"	5th	1	11	23
"	6th	6	1	6
"	7th	3	2	27
"	8th	5	1	16
"	9th	6	0	19
"	10th	5	6	20
"	11th	0	5	14
"	12th	5	10	23
"	13th	2	11	20
"	14th	5	1	13
"	15th	5	1	5
Edward VII's	1st	3	11	24
"	2d	0	9	14
George V's	1st	Began January 31, 1911.		

¹ From the *Statesmen's Year Book* for 1915, p. 6. Note that before 1911 the House of Commons was elected for a term of seven years, unless sooner dissolved; since 1911, for a term of five years. On account of the Great War, the term of the Commons then sitting was extended to seven years.

CHAPTER IV

THE CABINET AND THE COMMONS

Departments of Government not Separate in England. Though it is common to discuss government under the heads of its three great departments, the legislative, executive, and judicial, it is impossible to treat any one of these, particularly the legislative and executive, entirely separately in any country; for they are more or less associated in practice. This is particularly the case in England. Though we may for clearness adopt this method of discussing first the legislature and then the executive, we must constantly speak of the two together, because they are in fact intimately united.

The King and the Cabinet. The King, as will be explained in Chapter X, long ago ceased to be the real executive of England. That position is held by the Cabinet, which, though in legal terms merely the King's Ministers, is by the custom of the constitution in effect the executive committee of the House of Commons. This is only another illustration of the

fact that England is not a government in which one department is balanced against the other to prevent either from grasping an excess of power, but is one in which one branch, namely the House of Commons, ~~has actually acquired almost all power,~~

The Cabinet the Leaders of the Majority Party.
Let us make this plainer. In the times when the King was a much more active factor in the government than today, he would sometimes appoint a prominent member of Parliament as his Minister in order by the influence of such a man to get their consent to the royal plans. As Parliament increased in power, it insisted on the Ministers' being chosen from among its members, in order to exercise control over administration; and as the Commons gradually came to be the more powerful branch of Parliament, that house succeeded in establishing as one of the firmest customs of the constitution what King William III had begun merely as a sort of experiment for getting his measures adopted more easily, namely, the rule that the Ministers must be the leaders of the party having a majority in the House of Commons.

In a later chapter we shall take up the various executive departments. It is sufficient now to understand that in their ordinary executive duties they are similar to the departments headed by the members of the President's Cabinet in the United

States. But here the similarity ends; for the members of the American Cabinet are merely administrators of their various departments and advisers of the President; whereas the British Cabinet are all this and something very important besides.

Cabinet and Ministry. Two terms, which may sometimes be used interchangeably, but at other times must be kept distinct, are Cabinet and Ministry. The Ministry consists of about forty men, comprising all the heads of departments, such as the treasury, navy, home affairs, etc., a few important assistants, and a number of high officials of a somewhat formal and honorary character without any routine or departmental duties. The Cabinet, however, is an inner council of the Ministry that includes only about half its members. These more important officials (often called "Cabinet Ministers") are the recognized leaders of the party which at the time commands a majority in the House of Commons. For the better planning of the work of administration, they hold for counsel among themselves weekly "Cabinet meetings." It is they who really conduct the policy of the government, without consulting the rest of the Ministry. It is their task to determine what measures shall be introduced into Parliament; and on them rests directly and conspicuously the duty of carrying out the party platform and pledges and of maintaining the interests and honour of the

nation. In a word, the Cabinet is the real executive in England.

Responsible Ministry. This whole body of officials, including both the Cabinet and non-Cabinet Ministers, are said to form a "responsible Ministry." Of course any Minister is responsible in the sense that he must obey the laws of his country and is subject to discharge if not satisfactory to his superior, as, *e. g.*, the Postmaster-General of the United States would be punished for violation of the law and might be discharged for inefficiency or disregard of the wishes of the President. But the English Ministry is "responsible" in another sense also. It is responsible politically to Parliament; *i. e.*, if it is not approved by a majority of the House of Commons, it must resign, without reference to its honesty, wisdom, efficiency, or any other matter except that it is unacceptable to a majority of the representatives of the people. In this way the people control both the Parliament and the executive officers also.

A Minister's resigning his position as Minister has no effect upon his remaining a private member of Parliament.

Collective Responsibility. Moreover the Ministry is responsible as a body, not separately; for their policy is the party policy, and if the majority in the Commons vote against them, it means that the house wishes their party to give up the conduct of the

government. It is understood, of course, that if a Minister has been guilty of misconduct or indiscretion as an individual, he alone is condemned and resigns, because no question of the conduct of the Cabinet or the policy of the party is involved.¹

Appealing to the Country. In attempting to make clear the responsibility of the Ministry, I have said that if they are outvoted in the House of Commons, they must resign. They may sometimes adopt another course, however. If they believe that the people are really in sympathy with them and do not approve of the attempt of the Commons to turn them out, they may refuse to resign and appeal to the people by dissolving Parliament and ordering an election of a new House of Commons. In the campaign which follows, between the dissolution and the choice of the new Commons, the country rings with the speeches of Ministers, their followers, and opponents, in a mighty effort to secure a majority in the coming house. It is similar to an election in the United States in which a President and a new Congress are to be chosen.

If the result of the election is to place in the House of Commons a majority belonging to the party of the Ministry, the Ministry are sustained by the people and retain their positions; but if the new house is in the control of their opponents, the

¹ Cf. pages 126-127.

people have condemned them, and they should resign immediately upon the announcement of the result, as they will otherwise be compelled to do as soon as Parliament meets.

Vote of Lack of Confidence. The Ministry may be turned out or forced to appeal to the country, as described above, not only by defeating one of their measures before the House of Commons, but also by carrying a motion that they no longer possess the confidence of that house. This motion can be made at any time and must be voted upon as soon as reasonable opportunity has been afforded each side to defend its position. As a matter of fact, this is the usual way in which the Ministry is overthrown in the Commons, the defeat of their bills being very rare.

Taking of Office by a New Ministry. The Ministry, when defeated in the House of Commons, or in a general election, wait upon the King and surrender their offices. The King at once sends for the recognized leader of the new majority party, requesting him to call at the palace. The gentleman upon his arrival is simply informed that, the Ministry having resigned, he, being the recognized leader of the majority party, will please form a Ministry.

There is usually no doubt as to whom the party recognizes as its leader, as this is, except in rare instances, determined by the general consensus of

approval of a chief who has won his position through long parliamentary service. A few times it has been necessary for the members of the party in Parliament to determine in caucus whom they will recognize as their head. A chief once definitely accepted usually continues to be recognized as such as long as he retains his health and strength.

It occasionally occurs that the pre-eminence is doubtful between two or three really strong men, no one of whom is clearly the preference of the majority of his party. Under these circumstances the King is free to use his own judgment as to which he will summon. If, however, he has been evidently mistaken, the gentleman himself will so inform His Majesty and advise the summoning of the one whom he considers entitled to the position. Thus, *e. g.*, Lord Hartington when requested by Queen Victoria in 1880 to form a Ministry declined to do so and advised Her Majesty to send for Mr. Gladstone, as the sovereign promptly did. It can hardly be doubted that the Queen was somewhat influenced by her personal dislike for Mr. Gladstone in this case, as she plainly was against another Liberal statesman in 1855. On that occasion, after vainly trying in succession to induce Lords Derby, Lansdowne, and Russell to form a Ministry, she finally had to resort to "her old enemy Palmerston." In both cases, of course, the sovereign was obliged to yield. In the

event, however, that a politician who was not acceptable to the Commons should obey the order of the King to form a Ministry, he would soon discover his mistake; for the leading politicians would refuse to accept office under him, and if he should still be so foolish as to persist, the Commons would drive him from office by a vote of want of confidence.

The Verdict of the People. It is now a recognized principle that the government must be acceptable to the people. Hence, if the new Ministry have taken office in consequence of the resignation of their opponents on account of an adverse vote in the House of Commons, they will dissolve Parliament and order a new election in order to allow the people at once to declare which of the two parties they prefer to bear rule; and it occasionally happens that the voters return to power the party of the recently defeated Cabinet, whose members thereupon resume office. This is rare, however; for the House of Commons, and more especially the Cabinet, keep in close touch with public opinion, and if a Cabinet is so far convinced of its weakness as not to venture an appeal to the people when defeated in the Commons, it is very likely correct in thinking that the political complexion of the country has changed.

If a new Ministry is formed simply by redistributing the offices among the leaders of the party

already in power, the election of a new Parliament is not necessary. It must be remembered, however, that in a system whose operation depends in so many particulars upon the experience, judgment, and sense of propriety of the men in charge, many circumstances arise for which no set rule can be stated. In such a flexible system all statesmen would act in the same way in the more obvious and regular cases, though different men might, without being considered as violating the constitution, act differently in cases less clear and typical.

Voluntary Dissolution by the Cabinet. Another fact in connection with dissolving Parliament may be explained here. It will be recalled that the Commons are elected for a term of five years, but are never allowed to serve out the full term. If their term is not ended by a dissolution for the reason just described, they will be dissolved independently of any such crisis shortly before the expiration of the five-year period. The Cabinet of course desire that the election shall come at a time when the people are favourably impressed with their party; and hence, as the day draws near which would put an end to the existing house, they seek to hit upon some such occasion to order a new election as the successful termination of a war, the passage of some popular law, or the appearance of favourable results from some of their measures. This may give

the existing Ministry a certain unfair advantage, though one which would be of little help to a weak or really unpopular or unsuccessful Cabinet; while it is undoubtedly true that a party would be subjected to an unfair disadvantage of much more serious character by having the election at a certain fixed time, immediately before which their opponents, or the mere course of events, might produce circumstances which would prejudice the people against the government. This is frequently the case in the United States where the fixed date for the election not only offers tempting opportunities to the party in opposition, but also frequently deters the party in power from conducting the government with an eye so single to the public good as they otherwise would do. The remark that it is as fair for one party as the other does not dispose of the matter. The principal question is, which system is fairer and better for the people?

Public Interest in Parliamentary Proceedings.

We can understand why the public takes such keen interest in the debates in Parliament; for the vote upon any question may turn out the Ministry, or at the least show that it is rapidly approaching its doom. Politics in England are a war in which a decisive battle may occur at any time; while in the United States, no matter what the President or Congress may do, there is no chance of getting them out

until the next election, and hence their struggles are not of such importance to the contestants or of such interest to the voters.

"The Government" and Popular Control. So great is the power which rests with the Cabinet as the responsible officials in control of public policy that they are in fact spoken of as "the government." As the leaders of the political party for the time being in power in the country, they are the dominating feature of the House of Commons. This concentration of authority and responsibility openly and plainly in the hands of a small united group enables the voters to perceive whether the party pledges are being redeemed and the government administered in a proper manner; for these twenty or so men are absolutely responsible for the passage of all important laws and are obliged at any time to answer questions touching any fact or feature of the public business, except, of course, such as military secrets or phases of foreign relations which cannot properly be discussed before the world.

Dominance of the Cabinet. The system involves not only the dominance of the Cabinet over the time and business of the House of Commons, as of the officers over a disciplined army, but also the relative insignificance of the individual member. It is distinctly a system of brilliant leaders and loyal followers. The new man is given a fair chance to

show what is in him; and mere claptrap or buncombe count for little before such judges as the House of Commons; but if he proves to be only a commonplace fellow, the public business is not long impeded by his interruptions.

There are, however, many men valuable in the laborious duties of the committee room who are almost entirely unknown for anything they say upon the floor of the house and are yet esteemed by those who know their work as useful public servants.

Yet, strong as is the leadership of the Cabinet, it is by the consent of the House of Commons, which can overthrow the leaders, or indeed the whole system, if it chooses. Hence it is an exaggeration to say that the Cabinet rules the country. Rather, it administers the government with firmness and with independence from trivial interference. England supplies the most decided example of rule by party, the most perfectly worked out system of personal and party responsibility—a responsibility which enables the House of Commons instantly to call the Cabinet definitely to account, and the country on important occasions similarly to call to account both Cabinet and Commons.

Advantages of Co-operation of Legislature and Executive. The advantages of the system of responsible Ministry are great and evident; and yet there are also dangers. It seems to be peculiarly

suited to the English who developed it, fitting them like their skins do their bodies; but in many of the countries which have copied it, it has not worked well. It should be remembered, however, that these are nations which had previously, either through lack of aptitude or of opportunity, not displayed the highest ability in self-government. It is easy to copy the mere forms of a government, but it is not possible to reproduce the spirit, character, and circumstances out of whose workings through the centuries it has been developed.

The people of the United States, though deriving their political and legal principles from England, have not adopted this parliamentary system, as it is called, but have developed the presidential form.¹ Many consider that with us the English system would involve a dangerous degree of popular passion, political violence, and instability. It is certain, however, that we would be benefited by adopting to a certain extent the English principle of a closer touch between the executive and legislative branches of the government, so that each might better understand and co-operate in the tasks for which their agreement is necessary. Presidents Washington's, Adams's, and Wilson's reading their important messages before Congress in person, as also their freer personal communication with the Senate on treaties

¹ See page 8 above for explanation of these terms.

and appointments, are efforts to avoid the great disadvantage in the performance of the duties of President and Congress which has resulted from the excessive separation of these branches of our government—a separation that we have allowed to extend far beyond reasonable degree and to become almost a binding custom.

The Future of Party Government. Our discussion has assumed the system of parliamentary government to be operating in normal times of foreign peace and party strife. The reader is familiar with the action not only of England, but of other parliamentary countries also, during the Great War of putting party dissensions aside and forming a coalition Ministry, without any appeal through a new election to the people, from men of both parties, so that the strongest talents and the patriotic zeal of all groups may be brought into co-operation for the common good in a crisis so severely straining the material and moral resources of the State. Some eminent English publicists prophesy that the wasteful opposition of faction must be permanently superseded by such a non-party system. As pleasing as is such a vision of a sort of political millennium, human nature and the experience of the past hardly promise its realization. Even during the American Revolution, as the years wore on, two well-defined factions arose in the Continental Congress on the

methods and aims in the conduct of the war. Washington hoped for a non-party administration under the Constitution, but in vain. Nor are the present coalition Cabinets in Europe the first to be formed under similar circumstances. In the face of threatened destruction all factions unite; but the peril passed, differing views of the rights of classes, the obligations of wealth, and the best means of serving the common good or protecting special interests make party divisions and party government inevitable. Not only so, but doubtless no other system serves so well to winnow good from bad and modify extremes in the formulation and administration of laws.

CHAPTER V

ORGANIZATION AND WORK OF THE HOUSE OF COMMONS.

—GOVERNMENT BILLS¹

The Speech from the Throne. Just as the President sends or delivers to Congress a message at the beginning of its annual meeting, reviewing the state of the country and recommending needed legislation, so the King, as described above,² delivers to Parliament an annual speech from the throne. The American custom in fact originated in imitation of the British, with which the founders of the republic had all their lives been familiar as British subjects. Since the executive authority is really in the hands of the Cabinet, and the "speech" is their declaration of the program of the party in power, it is written by the Prime Minister, with the benefit of the criticism of the Cabinet, without any participation by the monarch. Its importance may be judged by the fact that it not only reviews the state of foreign and

¹ Government bills are those which are introduced by the Ministry.

² Page 27.

domestic affairs, but announces the measures which the Cabinet propose to present to Parliament.

His Majesty's speech is read by him or his representative in person before both houses assembled in the House of Lords. On the return of the Commons to their chamber, the Speaker reads a copy of the speech to his fellow commoners, only a portion of whom probably had cared to crowd into the small chamber of the Lords and stand outside the rail, as even their Speaker must do, thus recalling the time when the Commons were really the "lower" house.

Debate on the Speech from the Throne. Being in reality the platform of the party in power, the speech from the throne is treated accordingly. Its consideration begins the work of the House of Commons. Some member selected for that honour moves in a few brief remarks that the house thank His Majesty for his most gracious speech. This is called moving the address in reply to the speech from the throne. The leader of the Opposition (*i. e.* the party in a minority in the Commons) rises and attacks the King's speech with all the vigour and venom with which politicians are accustomed to denounce each other's plans. The Ministers of course defend the speech. The debate is perhaps the most general one that occurs in Parliament; for it ranges over the entire policy of the party in power, and the general

merits and demerits of its principles and aims. The battle may continue for ten or fifteen days. If the motion to thank the King is carried, the Ministry win; but if an amendment is carried expressing regret that some subject was omitted or in any other way manifesting the dissatisfaction of the house, the Ministry know that they do not command the support of the majority, and therefore they dissolve Parliament and appeal to the people, or resign, as described in the preceding chapter.

[**Arrangement of Seats.** The Speaker's chair is stationed in one end of the small hall, measuring seventy-five by forty-five feet, in which the house meets. Except a few seats in the rear which are placed across, the benches run lengthwise of the hall, four rows on each side, rising one above the other so that their occupants sit facing each other with a broad aisle between. The supporters of the Ministry occupy the side of the hall to the Speaker's right; those of the party in opposition, *i. e.* the minority, the side on his left. The front bench on the Speaker's right and nearest his chair is called the Treasury bench and is occupied by the Cabinet. The one opposite is called the Opposition bench and is occupied by the late Ministry of the defeated party. The supporters of the two rows of opposing chiefs are arranged upon the benches behind the respective groups of leaders. A member who does not count

himself a follower of either party sits in the rear of the hall, "below the gangway," as it is called.

Dominant Position of the Cabinet. It is impossible to understand the working of the House of Commons without keeping in mind the dominant position of the Cabinet. Since they are held responsible for all government actions, they must be allowed a very free hand in shaping public policy, conducting the administration, and passing laws through Parliament. The Ministry in power is called "the government," and to a very considerable extent it does govern. The King, the nominal chief executive, is completely in their hands and does not in any way rule the country.

"Government Bills" and "Private Member Bills." Much the greater part of the time of the house is taken up by the Ministers or by the discussion of their proposals, "the government measures." Every large body with a great variety of duties must necessarily assign many matters to committees, and the House of Commons, like all modern legislative bodies, also does this. But the committees do not play any such part in Parliament as they do in our Congress, where they perform practically the bulk of the real work of legislation.

In Parliament all bills by private members, with few exceptions, are referred to a committee which conducts the real investigation and discussion and

recommends the house to either kill or pass the measure. But not so the great measures which constitute the program of the party in power. These are introduced by the Ministers and are discussed in the meeting of the whole house, either in regular session or sitting as the Committee of the Whole.

Rules of the House. The rules for transacting business, though much simpler than formerly, are so complex that only a skilful parliamentarian can steer his way. They are similar to those of our Congress or legislatures; for, as one should keep in mind, the American system is derived from the English. Though we shall, of course, not trouble ourselves with the intricacies of parliamentary practice, we should understand clearly the following rules:

First, a bill must ordinarily be discussed both in the regular session of the house and in committee. Remember, though, that in the case of the great government bills the committee is the Committee of the Whole, which is virtually the house itself. Second, to become a law, it must pass three readings in both houses, i. e. must be passed three separate times in each house.

First Reading of a Bill. The procedure upon a bill is as follows: The Minister in charge of the department most nearly concerned with the proposed law asks leave to introduce the bill. He explains

the nature of his measure, and a thorough debate follows upon its outstanding features and general principles. Discussion at this stage does not enter upon minor details, nor are amendments now offered. The house grants permission, and then passes the bill through its first reading.

If public necessity requires, a bill may be passed through all three readings in one day; but this is very unusual, and practically always the different readings are separated by several days.

Second Reading and Discussion in Committee.

On the second reading the house again considers the bill upon its general character and does not allow amendment. Upon passing the second reading, the bill goes to "the committee stage." It is in the detailed committee discussion following the second reading that amendments are considered and either approved or rejected by the committee. After this the committee reports to the house, stating what amendments, if any, it recommends. The house then approves or rejects the amendments which have been recommended by the committee; but if further amendments are desired, the bill must be sent back to the committee for their consideration.

Third Reading and the King's Signature.

This stage being completed, the house takes up the question, Shall the bill pass its third reading? At this stage the bill is either killed as a whole or passed as

a whole, without further amendment. In the latter case it is sent to the House of Lords, where it goes through a similar process; or if it has already passed the Lords, it is sent to the King, who signs it, without reference to whether he likes it or not.

It often occurs that one house insists on amendments to which the other is averse. If the houses cannot agree, the entire bill fails; for it must be adopted in identical form by both. The Commons, however, as explained above, have sole control over all money bills, and can have their way in any other matter by waiting two years and meantime passing the measure twice more in the form which they desire.¹

Initiative Generally with the Commons. The Commons are plainly much the more important of the two houses. The Lords in fact originate few bills, but principally confine themselves to amending, adopting, or rejecting those sent up by the other branch, thus illustrating their character as "a cautious house of revision."

The Budget. An all-important feature of the work of the Commons is the passing of money bills. Their customary control over the raising and spending of money has been growing stronger for centuries, until it was made absolute by law by the "Parliament Act" of 1911, as for many years it had been supposed

¹ See above, page 24.

to be by long established custom.¹ In finance the house follows very closely the lead of the Cabinet, and hence we must first notice the part played by these officials.

In England, the minister of finance, called the Chancellor of the Exchequer, presents annually to Parliament a carefully balanced statement of the amounts necessary to support the various government services and an estimate of the taxes which will be required to meet the total. This is called the budget. Its compilation by the Chancellor of the Exchequer will later be described. The speech in which he introduces his budget, especially if he is a man of eloquence and genius like Gladstone, is one of the great events of the session.

As explained above, the house discusses the details of money bills in Committee of the Whole. When dealing thus with the appropriation bills, it is called the Committee of the Whole on Supply, and when dealing with the tax bills, the Committee of the Whole on Ways and Means.

Adjustment of Income and Outgo. The Commons have an inflexible rule, amounting to one of the strongest customs of the constitution, that they will make no appropriation of money not requested by the Ministers, that they will increase no amount above what they recommend, nor change any

¹ Cf. page 24.

amount requested for one purpose from that purpose to another. The house allows itself by this rule to reduce the amounts which the Ministry request, but they rarely do so. A surer system for repressing extravagance, particularly for unjustifiable purposes benefiting special localities, can hardly be imagined. "Log-rolling"¹ and irresponsible expenditure are rendered well-nigh impossible.

Since the Cabinet guide in both the income and the expenditures, they can adjust them with such remarkable balance that the difference is on the average only about three and a half per cent. Some of our State legislatures seek to obtain system in their finances by employing the guiding hand of the Committee on Ways and Means or some similar group, in both taxing and spending. In 1915 seven States took decided forward steps in budgetary legislation, several giving strong leadership to the Governor. New York City and Boston have greatly improved their finances by adopting the English system. The lack of any such arrangement in Congress is one of the chief causes of extravagance and of the immense surpluses or deficits which fre-

¹ Log-rolling is the practice of a member or a group of members supporting another member's or group of members' measure on condition that the latter repay the service by supporting the measures of the former. It is commonly resorted to in order to secure the passage of measures neither of which could be passed on its merits. Cf. page 368.

quently occur in the federal treasury. Of late years, ex-President Taft and other leading American statesmen have strongly urged the adoption by Congress of some means by which they can transact the great business of taxation and expenditure through a budget which shall bring these to a proper balance and promote economical administration. An excellent step was taken in this direction by the law of 1909, which authorizes the President to go over the estimated expenditures and income and make recommendations for bringing them into balance.¹

¹ Beard's *American Government and Politics*, 211.

CHAPTER VI

ORGANIZATION AND WORK OF THE HOUSE OF COMMONS —PRIVATE BILLS AND PRIVATE MEMBER BILLS

Distinction between Private Bills and Private Member Bills. Having examined the procedure of the House of Commons in dealing with the great measures introduced by the Ministry and known as "government bills," we shall seek in this chapter to understand, first, the procedure on private bills and private member bills, and second, the system of committees which largely attend to these matters.

First, as to the distinction between public bills and private bills. A public bill is one that is of general interest and operation and applies to the whole country, or such portions of it as fall within its provisions. A public bill may be introduced either by a Minister, in which case it is called a government bill, or by a private member, in which case it is called a private member bill. A private member bill thus may be as really public in character as one introduced by the Prime Minister himself. Few public

bills are introduced by private members, however, for the reason that the system of a responsible Ministry leaves them small chance of passing. About forty government bills annually become law and about ten or fifteen private member bills, and few of these are on subjects which arouse argument.¹

Private Bills. A private bill on the other hand is one which deals with some particular person or persons or some particular place, as, *e. g.*, granting a group of men the right to build a trolley line along certain roads or streets, or empowering a city to acquire the ownership of its water works.

It is largely for attending to private bills and private member bills that the committees exist. Besides the Committee of the Whole, which is not strictly a committee at all, the Commons have select committees and standing committees.

Select Committees. A select committee consists usually of about fifteen members, and is appointed to investigate, consider, or report upon some special subject or bill. All sides of a measure can be more freely and thoroughly discussed in such a small body. If it is made up of capable and fair-minded men from both sides, Parliament can usually rely with safety upon its judgment and accept its recommendations, thus saving the time of the whole body for matters of larger importance.

¹ Lowell, i., 314, 356.

Committee Work on Private Bills. Private bills are of course introduced by some private member; but we must keep in mind, as explained above,¹ how they differ from private member bills. A private bill is considered by a small committee of disinterested members, who conduct a hearing very much of the nature of a trial between the persons who desire the bill to pass and those who consider it contrary to their interests. Lawyers present the two sides, and the expenses are quite heavy, which often works injustice to the poor. The advantage of the system is that it puts private bills upon the basis of their merits, as in a court of law, and prevents that reproach to American legislatures known as "log-rolling."² Parliament generally follows the advice of the committee in passing or rejecting private bills.

The Lords and Private Bills. In view of the fact that the Lords do not discuss financial measures and in fact allow a great deal of other legislation to pass without opposition, they have more time for private bills; and it is generally recognized that their services in thoroughly sifting these applications in their passage through their house are of great value in protecting the interests of the public. The Parliament Act of 1911 limiting their powers as to public bills does not apply to private bills, and so leaves

¹ Page 67.

² For meaning of log-rolling, see page 65, note.

their authority in regard to these as large as that of the House of Commons.¹

Standing Committees. The standing committees are four in number. They consist of from sixty to eighty members each, chosen from the parties in the House of Commons as nearly as possible in proportion to their relative numbers. They are intended in fact to be miniatures of the house and to save its time by threshing out the discussion and amendment of a large number of bills.

The Committee of Selection. Most of the committees are appointed by a small committee consisting of eleven members called the Committee of Selection, which is itself elected by the house at the beginning of each session. Its members are in fact, however, chosen in accordance with the wishes of the heads of the two parties in the house and so consist of representatives of both parties, with a majority belonging to the party in control.

Necessity of Committees. All this serves to illustrate how the pressure of a vast amount of business has continually reduced the freedom of the house as a whole. In order to cope with its duties it has been obliged to delegate much of its work to its committees and much of its authority and leadership to the Cabinet, so that the Ministry has become more important and influential than ever. Every large

¹ See page 24 and note.

modern legislative body has had to economize its time and energy in some such way; and the English are satisfied that their method of concentrating power and responsibility in the hands of a small group standing in the light of constant public interrogation and criticism supplies the best means by which government may be made efficient without being allowed to escape from popular control.

CHAPTER VII

CUSTOMS OF THE HOUSE OF COMMONS

A Real Deliberative Assembly. "The mother of Parliaments" has some peculiar and interesting ways all her own. But before taking up these let us emphasize the fact that the House of Commons and the House of Lords are true deliberative assemblies. There is a strong tendency for a large body to become a mere machine for registering the decrees of a ring of leaders or a set of committees. That such has not been the fate of Parliament is largely due to the fact that it is not overwhelmed with the thousands of bills which crush the freedom of debate out of some legislatures. The number of bills introduced annually into the House of Commons is only from 350 to 500; and among these, some 40 or 50 great government bills consume very much of the time of the whole house, the detailed discussion of the others being disposed of in the committees. The number of bills introduced into the American House of Representatives averages over 10,000 a year. During

the two years' duration of the Fifty-ninth Congress there were passed 692 public and 6940 private bills, the latter principally private pension bills to place names upon the rolls which could not meet the requirements of the pension law.¹

The small size of the chamber, both of the Lords and of the Commons, in which a member may easily be heard in a conversational tone, favours serious and effective discussion. As Lord Bryce remarks regarding immense legislative halls capable of seating vast throngs of visitors, it is hard to talk sound sense at the top of one's voice.

Applause and Disapproval. Applause and disapproval are expressed in Parliament by cries of "Hear! hear!"—an expression, as has been said, capable of varying from thunderous cheers of approval to the most contemptuous sarcasm.

Another custom of the Commons is that of "coughing down" a tiresome speaker. A new member is given a fair opportunity, and is even generously encouraged if he appears earnest and capable; but if he is foolish or pompous, he soon finds that his attempts to exhibit his talents are extinguished amid a chorus of coughs and hoots. It is related of Disraeli that he was coughed down when he attempted his first speech, and that he sat down with the remark, "The time will come when you will hear me!" And

¹ Beard's *American Government and Politics*, 271.

it did; for his brilliancy and persistence finally made him a Prime Minister upon whose words the world hung with intense interest.

It can easily be understood why experienced members speak of the Commons as both the most trying and the most sympathetic audience in the world. It is a body before which the most experienced parliamentarian appears with a certain awe. John Bright said, after his fame as an orator had become world-wide, that he never rose to address the house without his knees knocking together.

In the face of a regularly tiresome speaker the members simply walk out as soon as he begins; so that such a one may acquire the name of "the dinner bell" from the promptness with which he empties the benches.

"Naming" a Member. A peculiar custom in connection with the Speaker's extensive power in preserving order is "naming" a member. If a member so far forgets parliamentary decorum as to use offensive language and refuse to withdraw it, or to persist in disorder, the Speaker makes one or two courteous appeals to his sense of propriety. If this fails, he says, "Then I name you, Mr. Blank." Immediately the government leader, or in his absence the senior Minister present, rises and moves that the member be indefinitely suspended. The motion is always

carried. Reinstatement follows after a time proportionate to the gravity of the offence.

Stopping a Member's Remarks. The Speaker may stop a member because of his remarks being entirely off the question under discussion or because of his merely repeating virtually the same thing with the evident intention of delaying business.

Hats. Except when speaking, or during prayers, and on a few ceremonial occasions, the members wear their hats; and sometimes, it might be remarked, an embarrassed inexperienced speaker creates the chief part of his impression upon the house by sitting down on his tall silk headpiece after finishing his remarks.

Closing Debate. The cloture rule of the Commons, is rather strict, as in the American House of Representatives. In a body of such size it is essential to fix the time at which debate must stop and a vote be taken. The absence of such a rule in the Lords and in our Senate has often been abused by the minority in order to prevent a vote's being taken on a measure favoured by a majority of both houses.¹ "Talking a bill to death," as it is called, might sometimes be justifiable, as any other desperate means of defence in the presence of a public peril threatened by an ignorant or corrupt majority; but its employment except for some such extraordinary purpose is

¹ In March, 1917, the Senate adopted a rule by which a two-thirds vote may close debate.

contrary to the principles both of democracy and good government.

The Whips. Among the most interesting officers in the conduct of the British government are the whips, although they have no part in shaping legislation or executing the law, and do not even take part in debate. The fact that an adverse vote in the House of Commons on any except some insignificant matter would require the Ministry to resign, or else appeal to the country, makes it necessary always to have on hand more of the supporters of the government than of the opposition. To secure this is the principal duty of the whips.¹ Both sides have whips, the Ministry four and the opposition three. The chief ministerial, or government whip, holds an official position without duties as Patronage Secretary, or Parliamentary Secretary, of the Treasury, with a salary of £2000. His three assistant whips hold sinecures as Junior Lords of the Treasury with salaries of £1000. They are counted among the Ministry, but are not in the Cabinet.

Duties of the Whips. The chief whip particularly must be a man of strong personality, popularity, and

¹ The name is from the whippers-in at a fox chase, whose duty is to keep the dogs from wandering off the trail. Of recent years the parties in the American Congress are beginning to employ certain members in very much the same task, though in our system of government their duties, though very useful, cannot be of the same importance as those of the English whips, on whose efficiency the life of the Ministry may depend.

high social position, in order the better to exercise pressure in keeping the party members in good discipline. He must know the disposition and tendencies of every member of his party and must keep the Prime Minister informed of all undercurrents of feeling in the house. Another important duty is to keep the members true to party interests, and to persuade or intimidate any one who threatens to desert.

The word whip is also used for the written notes sent out by the chief whip to every member of the party, requesting them to be present at such and such times in order to vote upon important questions. The words of these brief notices are underlined in proportion to their urgency; and a member who disregards a "five line whip," as the most pressing ones are called, suffers grave discredit from his associates.

"Division." In votes on important motions, it is common, when the Speaker announces that the ayes (or noes, as the case may be) have it, for some member on the losing side to shout, "Division," *i. e.* to call for an actual count. This serves the same purpose as the American custom of demanding the yeas and nays, as the members are not only counted, but are taken down by name according to their votes.

On a member's demanding a division, a two-minute sandglass is turned and electric bells are set ringing in every part of the building. Members rush

in from the dining-rooms, terrace, library, lobbies, etc., and with the dropping of the last grain in the little glass the doors are locked. The Speaker says, "Ayes to the right; noes to the left," and the members file into the rooms called "division lobbies" on the sides of the chamber. Those not desiring to vote retire to the room behind the Speaker.

Whips as Tellers. If the vote is one which concerns the measures of the Ministry, or if the opposition wishes to make it a test of strength, either side requests the Speaker to appoint whips as tellers, and this indicates to every member that he is expected to vote with his party. Otherwise everyone is free to vote as he pleases.

Counting the Vote. The chamber being empty, a pair of tellers (each pair consisting of one man from each party) take their stand at the doors of the division lobbies and count the members as they pass back into the chamber. The four tellers then march up the entire length of the hall to the Speaker's chair to announce the vote, the tellers for the winners marching on the right. When the tellers for the opposition are seen on that side, indicating that the Ministry have been defeated, the shouts that rend the air are such as would burst forth in America if the result of a Presidential election could be announced in an equally sudden and dramatic manner before the most intensely interested audience in the

nation. For, although the Ministry may triumph at the general election which must follow, probably it will not, and there will be a fallen Ministry and a change of the party in control of the government.

Standing Vote. A division requires a little over ten minutes, but is probably the quickest method of taking a test vote. If the Speaker thinks that it is demanded frivolously or merely for delay, he may refuse it and, instead, count the ayes and noes by a standing vote.

Re-election of a Member who Accepts a Ministership. A rule going back to the times when the King sought to control Parliament is that when a member of the House of Commons is appointed a Minister, he must resign his seat and submit himself for re-election, and thus obtain the approval of his constituents to his connection with the court. He is now hardly ever opposed for re-election, and indeed the reason for the rule has ceased with the disappearance of the power of the King. It was very sensibly dispensed with on the organization of the new Ministry in December, 1916, and might very well be permanently abandoned.

Warden of the Chiltern Hundreds. A rule going back to the Middle Ages, when it was difficult to induce men to incur the expense and danger of leaving their homes unprotected, travelling the robber-infested highways, and accepting the loss incident

to the neglect of their affairs, is that a member may not resign. There is a way of escape, however. None of the King's officers, except Ministers, naval and army officers, and a few others, may legally sit in the Commons. Hence, if a member accepts such an appointment, his seat is thereby vacated. In bygone days the hills to the north-west of London known as the Chiltern Hundreds were so plagued with highwaymen that the King appointed to check them a special officer called the Warden of the Chiltern Hundreds. Though the occasion for his duties has long since passed, the position is still retained, in order that a member of the Commons wishing to retire may at his request be appointed to that office. He holds it for one day, and then resigns it in order that it may be available for any other member who may wish to retire. This is very queer, but not more so than the law in some American States of asking an accused person at his trial, "How will you be tried?" simply because in England seven hundred years ago he had the right of choice between ordeal (the judgment of God) and jury (the judgment of his countrymen). Now he answers this useless question, "By God and my country"; but would it make any difference if he made some other choice?

CHAPTER VIII

THE HOUSE OF LORDS

Ancient Origin of the House of Lords. Though the House of Lords has come to have far less power, it has a much longer history, than the House of Commons; and in the days when the latter was young and weak, the Lords nobly championed not only their own privileges, but on many occasions the liberties of all England.

In a sense, the House of Lords (or House of Peers, as it is also called) is descended from the legislative council and supreme court of the Anglo-Saxon kings, the Witenagemot, or meeting-of-the-wise-men. A sharp break was occasioned by the virtual passing away of this ancient body and the creation of a new set of lords by the Norman conquest. From that time, however, there is a steady development from the Great Council of the Norman kings—the advisers whom those sovereigns regarded or overrode as they saw fit—on through the mighty barons who deposed rulers and browbeat Commons, to the present condition, when they are again merely the advisers of the new sovereign, the people, who, as the

sovereigns of old did, override them when they choose.

Composition of the House of Lords. The House of Lords is made up of several different elements. First, it includes all hereditary English nobles.^{*} These constitute about seven eighths of the whole number. Second, there are sixteen elected from their own number by the Scotch peers every time there is an election of a new House of Commons. These are called Scotch representative peers and sit in the House of Lords only for the Parliament to which they were elected. Third, there are twenty-eight elected for life from their own number by the Irish nobility. These are called Irish representative peers. Fourth, the two archbishops and twenty-four of the bishops of the Church of England hold seats in the House of Lords. And fifth, there are four Lords of Appeal in Ordinary, to perform certain duties to be described later; for the House of Lords, from the dim ages of the Anglo-Saxon Witenagemot, has been the supreme court of appeal in England. These four "law lords" hold their positions, like

^{*} To be strictly accurate we must state that these, who are here called briefly English peers, are themselves of three classes: First, English peers created before the union of England and Scotland in 1707, *i. e.* those whose title was created before that time; second, peers of Great Britain, created between 1707 and the union of Great Britain and Ireland into the United Kingdom in 1801; and third, peers created since that time. About three fourths of the peerages have been created since 1800.

other judges, during good behaviour, which practically means for life, and meanwhile enjoy all the privileges of their fellow-peers, but they do not transmit their positions or titles to their sons. They may resign or be deprived of their offices in the same way as other judges. In that case, they would also lose their membership in the House of Lords, though not their titles. The bishops are in these regards in the same situation.¹ The total membership of the house varies, both on account of peerages becoming vacant by lords dying without male heirs, or with only minor male heirs, and on account of new creations. In 1917 the total number was about 643.

Ranks in the Peerage. There are five grades of peers, in descending scale of honour as follows, the number in each in 1917 being indicated by the figures in parentheses: dukes (21), marquises (26), earls (121), viscounts (46), barons (356). A duke is always referred to by his title; marquises and earls often so, while the lower ranks are generally spoken of simply as Lord Tennyson, *e. g.*, or Lord Bacon.²

¹ Though there are thirty-four bishops of the established church (besides the two archbishops) in England, only the archbishops and twenty-four of the bishops sit in the House of Lords. When a bishop in the house dies, the one without a seat who has been longest a bishop becomes a member in his place. But the archbishops of Canterbury and York and the bishops of London, Winchester, and Durham are always members of the house. No Scotch, Irish, or Welsh bishop has a seat in the Lords.

² The above figures include only the peers having seats in Parliament. There are besides 19 Scottish and 59 Irish peers not in

Wealth of the Lords. The wealth of the nobles is very great, and varies as a rule directly as their rank. Besides their immense property in commercial and industrial enterprises, they own almost a third of the cultivated land of the United Kingdom and over one fourth of all the land, and exercise thereby a vast influence and draw a stupendous revenue from the industry of their fellow-subjects. This constitutes the real basis of their power, and is a far greater impediment to democratic ideals than everything else connected with their order.

The Character of the Lords. We have spoken of the fact that three fourths of the existing peerages have been created since 1800. The King is called "the fountain of honour," and as such confers titles, medals, or other honours for eminent public service of any kind; but the real authority is of course exercised by the Prime Minister. Thus titles of nobility have been conferred on many great soldiers, such as Wellington, Nelson, and Roberts; on great authors, as Tennyson and Macaulay; on great

Parliament, besides 24 ladies who are peeresses in their own right.

The place name in a nobleman's title no longer necessarily implies any connection between him and that locality, though it does sometimes indicate that the man upon whom it was originally conferred won distinction there, as Lord Kitchener of Khartum, or Lord Roberts of Kandahar—places at which they won brilliant victories for which they were given the title. It has been centuries since the title indicated any governmental authority over the region.

scientists, as Kelvin and Lister; on eminent men of business whose work has been particularly useful to the nation, as Lord Strathcona and Baron Rothschild; on great statesmen, as Chatham and Beaconsfield; on great colonial administrators, as Lord Clive and Earl Cromer. It would be a great mistake to regard the British peerage as a collection of fossils or degenerates. It is true that, although probably most peers were originally made such for some brilliant service, many of their descendants are in no wise distinguished; and it is also true that in past ages the honour often went to mere royal favourites, and in some instances to depraved characters on account of some disgraceful connection with the King. Some, too, are even to this day given a coronet for no good reason except that they are very rich and contribute liberally to the campaign fund of the party whose leader as Prime Minister is responsible for the conferring of the honour. This sounds very bad; but before expressing too severely our virtuous republican indignation, let us ask ourselves whether a man ever became a Senator or Governor or Vice-President in the United States for similar reasons. But taken all in all, the peers, on account of the wide distribution of titles in many lines of honourable service, and the traditions of their order, comprise a remarkably large proportion of able and high-minded men. Probably no other class of very rich men anywhere

in the world sends such a large proportion of its members into useful public service.¹

It may well be doubted whether the British people would have allowed the House of Lords to continue to exist but for the constant refreshing it has received from the best blood of the nation in a real instead of a merely conventional sense. The hope of winning a peerage, or at least a baronetcy, is a powerful impulse in leading thousands of brilliant young men to put forth their best efforts to rise to eminence in their professions or the government service. The descendants of the men who win their titles often turn out commonplace, despite the fact that "blood will tell." The Chinese have sought to gain the advantages of class distinction and yet counteract this defect by providing that a title of nobility shall expire after a certain number of generations, according to the merit of the original holder. Other nations seek to avoid the evils of hereditary aristocracy and yet gain the benefits arising from stimulated ambition by bestowing life membership in such bodies as, *e. g.*, the "forty immortals" of France. It can hardly be doubted that the American spirit which makes a man even of great distinction prefer plain "Mister" to any title, even bestowed for merit, assures a freedom from false valuations, flunkeyism, and social hypo-

¹ Cf. Moran's *English Government*, 176.

crisy which far outweighs any advantages that flow from hereditary class distinctions.

Popularity of the Lords. Strange as it may seem to an American, who often observes that aristocratic connections are a hindrance to political success, the people of England look upon the peers, if men of real ability and public spirit, as among the safest and most popular guides in politics. This is because they are not pursuing special favours in legislation, as ship-owners, manufacturers, or other business men often do; because they are rich enough not to need to be self-seeking, and because the eminence of their hereditary position is such that they can view public employment and affairs without being blinded by the glamour of office or subdued by the necessities of salary.

Privileges and Disadvantages of the Lords. The lords are under a very serious disadvantage in not being allowed to sit in the House of Commons; and of course they cannot vote for members. Now that that body has come to be the real government, this prevents some brilliant careers. Neither can a lord, except through an act of Parliament, resign his lordship; for he is born a peer as another man is a commoner.

The peers enjoy, of course, the highest social privileges. Besides occupying a pre-eminent position at all times, they are conspicuous at coronations, royal weddings, and court functions. Their legal

privileges now amount to so little as to be a poor compensation for their legal disabilities. A peer may at any time demand admission to the sovereign as one of his ancient constitutional advisers; but this amounts to nothing, as the King is now entirely in the hands of the Cabinet. Every person is entitled to a trial by his "peers," *i. e.* his legal equals, and hence a lord or his wife, or his widow if she has not forfeited the privilege by marrying a commoner, may be tried for treason or felony only before the Lords; but for misdemeanors he is tried before a magistrate or jury like any other Englishman. In either case, if found guilty, he is given the same punishment as a commoner. The indictment is by an ordinary grand jury.

In the past, peers have sometimes been tried by a special jury consisting of not less than twenty-three lords; but since 1685, all trials have been before the whole House of Lords. In either case a majority is sufficient to convict or acquit.¹ In civil suits, the fact that one or both parties may belong to the peerage makes no difference, and the case is tried in the ordinary courts. If, however, the claim of a person to a peerage is at stake, the claim to the title is decided by the House of Lords.

¹ *Britannica*, 11th ed., xvii., 4; Macaulay's *England*, "Delamere" in Index; Vernon-Harcourt, *His Grace the Steward and the Trial of Peers*, 417, 434; Burke, *Trials of the Aristocracy*, 158, 357; *State Trials*, xix., 1235; Blackstone (Jones's ed., 1916), 2584.

CHAPTER IX

THE LORDS AS A LAW-MAKING BODY

Pass 2

Irrational Basis of Membership. No progressive nation would today create a law-making body like the House of Lords. Its existence is based on historic precedent and habit, not on reason. What could be less reasonable than to suppose that a man is suited to make laws for a great empire simply because he inherits a title, earned, perhaps, by an ancestor for distinction in some line of activity in no way connected with the science and art of government? Many of the lords in fact care nothing for politics and never appear in Parliament except when some interest of their class needs their votes.

Elements of Strength and Usefulness. And yet the House of Lords, though violating both common sense and the principles of democratic self-government, works a great deal better than might be expected, as, in fact, do many features of the British constitution which, on their face, appear quite dangerous or absurd. To begin with, the actual work

of the peers is conducted by a small group who really take a deep interest in public life and give it a life-long study and practice. Some of these are simply earnest men of ordinary capacity, but some are trained minds of great ability. The bishops, too, though appointed because of eminence in the church, and not primarily as legislators, are men of high character and much above the average in intellect; and though they are not constant attendants except when religious, moral, or educational matters are under discussion, they frequently make formidable debaters.

Why the Lords have Lost their Power. The steady decline of the House of Lords in power has not been due primarily to their hereditary tenure's being contrary to the democratic character of the times, but to their overwhelming majority's having been steadily for generations members of the Conservative, or Tory, party. Over four fifths of the hereditary peers are Conservatives, as are practically all the bishops, and all the Scotch and Irish representative peers, since the great majority of their fellows who elect them are of that party and allow no representation to the Liberal minority in their own ranks. Liberals (or Whigs, as they are still sometimes called), when created peers, themselves drift into the Conservative camp, or at the least their descendants soon do. Thus for generations one party

in the state was always in control of one house of the legislature and could defy, up to the danger point of inviting revolution, the will of the people as expressed in the representative branch of Parliament. The Lords regularly used their power as Conservative partisans, and so killed many of the measures passed by the Liberal House of Commons. If they had voted impartially on all questions, independently of favouritism towards any party, they would have proved a valuable check upon temporary passion and would have been regarded as of such utility that the people would have left them undisturbed, or might even have come to regard them with a veneration similar to that entertained in this country for that almost equally undemocratic, but by no means equally partisan, body, the United States Supreme Court. But no vigorous modern democracy would permanently endure an hereditary house steadily in the possession and service of one party, and that the party opposed to democratic progress. Hence it had been apparent for years that some reform must soon come.

Clash of the Lords and Commons in 1909-11.

The occasion for the reform arose when the Lords, in 1909, in violation of one of the most sacred customs of the constitution, killed the tax bill, because it increased the taxes on their land in a way to lead them to think that large estates held generation

after generation in the same families would ultimately be subjected to such burdens as to render the system of land monopoly in a few hundred families unprofitable. In other words, the social and economic constitution appeared to them to be threatened with a revolution whose object was the extinction of the landed aristocracy. The Lords consider that such a landed aristocracy, with the freedom which comes from assured hereditary wealth, is of great value in supplying public-spirited men of leisure, friends of learning and art, who may set dignified standards of customs and manners, give society a certain stability and grandeur of style, and impress the masses with respect for property and government. It is always a question, however, whether such means of accomplishing these ends do not rather create a hatred for property and government, and thus, while affording a temporary sense of security, in reality render them insecure. At all events, the Liberals were convinced that, whatever the value of these considerations, they had been carried entirely too far and were being maintained at too great an exemption of the rich and too heavy a cost to the nation at large. Accordingly, when the Lords vetoed the tax bill, the Prime Minister dissolved Parliament and appealed to the people. The election returned a strong majority in favour of the Liberals, and the Lords felt compelled to yield.

Overcoming Permanently the Lords' Power of Obstruction. Several other important bills of the Commons had been killed at the same time as the tax bill, and it was therefore determined to use the occasion, the people being thoroughly aroused, to break forever the power of the Lords to defeat the popular will. The Lords themselves admitted that their house should be reformed and their power reduced; but no agreement as to details could be reached with the leaders of the Commons, and the Lords accordingly found themselves confronted with the demand that they accept the more radical reform proposed by the Commons alone. On their refusal, a dissolution and appeal to the country again sustained the Ministry. The "die-in-the-last-ditchers" among the peers still refusing to yield, the only alternatives remaining were the submission of the people, revolution, violent or peaceable as the event should determine, or swamping the Lords with new appointees in agreement with the desire of the nation. The first was unthinkable, the second unnecessary, and the crisis was relieved by the threat of the third. The Ministry simply announced that His Majesty considered it his constitutional duty to take such steps as might be necessary to secure the passage of the bill. This courteous expression was perfectly understood as meaning that the King would appoint a sufficient number of Liberal peers to overcome the

Conservative majority. It would be senseless to have their titles cheapened and their permanent control of their house annihilated by incurring this inundation of new nobles; and so the opposition absented itself and the "Parliament Act of 1911" was passed through the upper house by its few titled supporters.

The terms of this law have already been given on page 24, which should be reread at this point. Its effect is simply to reduce the House of Lords to "a cautious house of revision," which cannot participate in the raising or spending of public revenue, and which can only compel the Commons to wait two years for mature consideration before finally enacting a measure on which the people have set their minds.

The Lords Still a Useful Part of the Government.

It would be a mistake to suppose that this act destroys the power of the House of Lords; it only limits their power. Aside from the fact that their veto of private bills is still absolute, their veto may also defeat any except those great party measures which the majority of the nation are thoroughly determined to pass. It may be confidently expected that they will prove more useful in their new capacity of "a cautious house of revision" than in their former one of reactionary obstructionists.

The Ministry and the Lords. We may explain

here the relations of the Ministry to the Lords. Many of the Ministers in fact belong to that house, proving that there is no objection whatever to a lord as such in the government, but that the only objection is to his being a master instead of a servant of the people. It is in fact customary to have several of the more important executive departments represented in one house by the head of the department and in the other by his first assistant, or Parliamentary Under-Secretary, in order that there may be a responsible representative of the government to defend its policy in either place. Though the Prime Minister is himself often a peer, it is becoming more and more a disadvantage for him to be removed from the Commons as the arena where the decisive battles of policies are fought; and hence we may expect to see the head of the government in future less and less frequently chosen from the Lords.

An adverse vote in the Lords may even now prove a serious inconvenience; and before the Parliament Act of 1911 it often necessitated the abandonment of some of the Ministry's cherished plans; but it has no effect in depriving the Ministers of office or forcing a dissolution.

Procedure in the House of Lords. The rules for transacting business in the House of Lords are in general similar to those in the Commons, but, due to the greater leisure of the upper house, they are

simpler. The Lord Chancellor presides, but he has no such power as the Speaker of the Commons. The Lords decide all points of order, even as to which of two members rising at once shall have the right to speak.

Three constitute a quorum, and on one occasion the presiding officer, after being bored for an hour, put a stop to the orator on the ground of no quorum, as they were the only two members present. It often happens that a session cannot be held for the lack of the necessary three; and frequently when a quorum is present there is no business to occupy them. The rules, however, do not allow a bill to be passed without the presence of at least thirty members, though other business may be transacted with a smaller number.

The Lord Chancellor the Presiding Officer. One of the numerous duties of the Lord Chancellor is to preside over the House of Lords. It is not necessary that he should be a peer, and in fact the "wool sack," as the seat which he occupies is called, is technically outside the bounds of the house, though it is of course as really in the chamber as any other of its furnishings. Though a commoner might exercise all the duties of the Lord Chancellor, he is in practice always created a peer if not one already. If a peer, he votes as any other member of the house. Whether peer or commoner, he does not have the deciding

vote. In case of a tie in the House of Lords, the affirmative simply loses, as it fails to secure a majority.

Principally a Chamber of Revision. Even before the reduction of their power in 1911, the Lords had been tending for many years towards becoming a mere chamber of revision who pass, amend, or veto measures sent up from the Commons, but who introduce very few measures of their own. They possess for this reason the great advantage of not being hurried. Also, as their votes have no effect in sustaining or turning out the Ministry, they are more free to vote according to their individual opinions without having their freedom shackled by the obligations of party loyalty.¹ Hence they often perform good service in correcting faults or oversights in legislation; and their careful threshing out of private bills is of great public value.

We may well believe that in being deprived of their excessive powers, the Lords have secured a longer and securer hold on those which they retain, and also a firmer place in the respect of the nation.

¹ A little consideration will show that this is not inconsistent with what was said on page 90 as to their steady support of the Conservatives.

PART II.
THE EXECUTIVE
CHAPTER X

THE KING¹

The King as He Is. Writers on the English government frequently amaze the reader with a long list of things that the King can do, and then proceed to say that he cannot do any of them at all. I shall not do this, but shall attempt rather to describe the King, first and last, as he really is.

The Law of Succession. The law of succession to the Crown is passed by Parliament, just as any other statute. Parliament could at any time abolish the kingship itself and establish a republic or any other form of government. The King would be compelled by the custom of the constitution to sign his own deposition, and the new régime would continue so

¹ All that is said regarding the powers of the King applies, of course, to the Queen when the sovereign is a woman.

For the full legal title of the King, see page 309 and footnote.

long as the people chose to elect a House of Commons which approved of it. Parliament has frequently changed the succession to the Crown, and though it has always confined itself to shifting it from one branch of the royal family to another, it is just as free to go to an entirely new stock.

The law decrees that the Crown shall descend through the eldest line of the royal family, sons having precedence over daughters, even though the daughters be older. The descent is through the direct line from parent to child, whether male or female, in preference to the collateral line of brothers of the sovereign, even though the latter should represent an unbroken line of males. Thus a daughter, or any descendant of a daughter, of a dead man who would have inherited the Crown had he been alive when the last sovereign died, takes precedence over living brothers of that King. Accordingly when William IV died without descendants, his niece Victoria became Queen, even though William left a brother; because her father, though dead, was older than the King's surviving brother.

If the heir or the reigning sovereign becomes a Catholic or marries a Catholic, he thereby becomes, so far as the succession to the Crown is concerned, legally dead, and the throne passes to the next heir who is a Protestant. This law had its origin in the religious struggles of the seventeenth century and is

also connected with the fact that church and state are united under one head in England. So long as the sovereign is head of the established church and must swear as part of his coronation oath, along with the pledge to observe and uphold all the laws, that he will maintain and defend the Protestant religion as by law established, it would be almost impossible to do away with this rule.

Though we speak of the King and Queen, only one of them is the sovereign, and the wife or husband, as the case may be, has no more legal authority than any other subject.*

"The King never Dies." Though Parliament fixes by law the order of succession, no action is necessary in the case of each new sovereign, and in fact in legal theory "the King never dies." What is meant is that the kingly office is never vacant; and accordingly, on the death of the sovereign, an official steps out before the people and proclaims: "The King is dead; long live the King!"

The Long Struggle between King and People.
Magna Charta. There was for centuries a struggle between King and people as to which should rule. The story of this contest, its variations and combina-

* Only in the case of William and Mary have both King and Queen been sovereign; and even in that case it was ordained that the governing authority should rest with William alone. The proper title of the husband or wife of the real sovereign is Prince Consort or Queen Consort.

The King for

tions, failures and successes, forms a large part of English history—the part that gives that history its most distinctive characteristics and contributes principally to its value to the rest of the world. In 1215, the barons, with armour on and swords in their hands, and backed up by the people, forced King John to sign Magna Charta, and as a part of that law compelled him to agree that if he should violate their liberties as therein defined, a committee of twenty-five barons appointed to watch him should summon the others to make war upon him. Very soon this was necessary, and though they won a sort of victory, men saw that civil war was a high price to pay, and moreover that it was a very ineffective remedy.

Origin of the House of Commons. On the next great occasion of resistance to royal tyranny, they sought a more peaceful means in the Provisions of Oxford of 1258, and under the leadership of Earl Simon de Montfort, again backed up by the common people, the nobles forced a committee of fifteen upon the King as his rulers and guardians. This likewise soon led to civil war. But Earl Simon's efforts had not been in vain; for thirty years later the most valuable and characteristic feature of his program, the association of representatives of the common people in the work of government, which he had inaugurated in 1265, was made a permanent part of

the constitution; and from that day to this no Parliament has ever met without the elected representatives of the English nation.

Impeachment. But even with the nobles grown stronger and the people represented in the House of Commons after 1295,¹ the royal despotism was still heavy. Having twice found by sad experience that to lay hands upon the King's person shocked the sense of loyalty and hence led to civil war and failure, Parliament in 1376 adopted the method of striking at the men who carried out the King's despotic schemes. This consisted of a trial by Parliament of an official considered dangerous to the public welfare, and was called an impeachment. The "high crimes and misdemeanours" for which it was sought to bring the offender to account were usually connected with the discharge of his public duties and were committed while he held the office from which it was sought to remove him; but Parliament was not obliged to observe these limitations.

The impeachment began with a mere majority vote in the Commons to prefer charges against the obnoxious official, after which they elected several

¹ At first the nobles and commons deliberated together, though they voted as separate orders, each granting the King such a proportion of their goods as they saw fit. As the granting of supplies was in those days the principal business of Parliament, this arrangement worked fairly well. The Commons did not begin to meet as a separate house until about 1350.

of their members to conduct the prosecution of the accused before the House of Lords. The trial was carried on in much the same fashion as in the ordinary courts, the Commons seeking to support their charges by evidence and argument, while the accused personally or through his lawyers conducted his defence. The Lords acted as judges and by a mere majority vote declared him innocent or guilty. If found guilty, he was removed from office, and might in addition be reduced to poverty by a tremendous fine, be banished or imprisoned, or even put to death.*

Removal of Ministers at the Mere Wish of Parliament. A royal official could assist his master to do many tyrannical acts before provoking his

* The method is thus seen to be similar to that in the United States, which was copied from the English example, except that in the United States a two thirds vote of the upper house is required for conviction and the punishment is limited. In the Congress of the United States, punishment on impeachment cannot extend further than removal from office and incapacity ever to hold office again under the federal government. In many of the States, punishment cannot extend beyond removal from the office then held. This is partly due to the democratic spirit of the times, which considers that the people should have the right to endorse the action of their representatives by refusing the official a re-election, or vindicate him by returning him to office; partly to American good nature, which believes in giving a man another chance; and partly to the feeling that no individual can be a really serious menace to the public safety.

In any case, the accused may be prosecuted in the courts and punished like any other criminal, irrespective of whether acquitted or convicted in the impeachment trial; for the impeachment, in this country at least, does not put him in peril of life or member, but is simply to remove him from a position in which he is injurious to the State.

removal by impeachment; and consequently Parliament made efforts, generally unsuccessful, from time to time for the next three hundred years, to secure the right of selecting the Ministers of the King. It is expressive of the political talent of the English race that as early as the first quarter of the fifteenth century they had hit upon this and seemed in a fair way towards its accomplishment. But events, upon whose history we cannot enter, checked the development, and so the work had almost all to be done over again in the seventeenth and eighteenth centuries.

Cabinet Government and the Supremacy of the Commons. Since the expulsion of James II in 1688, the kingship has been merely an office, like the post-mastership, and the King simply the first official under the law. The development of cabinet government which soon followed made royal despotism impossible. The continued growth of the power of the people and the decrease of that of the nobles recently culminated in the Parliament Act of 1911, by which the House of Commons is made supreme.¹

The Prime Minister the Real Chief Executive. Let us remember, therefore, that the King is the executive only in name, and that the Prime Minister as head of the Cabinet is the real chief executive. The authority which the Crown could in former

¹ See page 24.

centuries exercise was very great, and theoretically most of those powers still belong to the Crown, for they have never been taken away by any law. But as a matter of fact they have all settled by custom as strong as law into the hands of the Prime Minister, Cabinet, or other responsible officials. "The King reigns, but does not govern."

Prerogative. The immense powers nominally residing in the Crown are of two kinds: first, the prerogative; and second, the powers conferred by act of Parliament. The word prerogative conveys the idea of absolute and undeniable right the exercise of which is not derived from any superior, and can be questioned or checked by no one. The royal prerogative consists at any particular time of all the powers, rights, and privileges, not taken away by Parliament, which the sovereign was accustomed to exercise in the days of the mighty monarchs of mediæval England. The prerogative is still very extensive, though it is now, of course, exercised by the courts of justice, the Prime Minister, or some other responsible branch of the government.

Statutory Powers of the Crown. Aside from its prerogative rights, the Crown enjoys other powers needful for the public service that Parliament has from time to time conferred. All these executive powers, both prerogative and statutory, are useful and needful for conducting the government. There

has, therefore, been no occasion for modern democracy to destroy them; it has simply captured them and entrusted them to men of its own choice for its own interests and service.

Consent of Ministers Necessary for All Acts of the King. The King cannot exercise even the slightest of his royal powers without the consent of his Ministers; for it has been for generations firmly established that no governmental act of the sovereign can be carried out without the order's being signed by some Minister responsible to Parliament and the courts of law for his act. The King is of course free to follow his own inclinations in his purely personal conduct, such as deciding whether he will attend the opera or the drama or choosing a place where he will spend the summer, provided even this is not such as to have a political significance, as, *e.g.*, going to a foreign country; but he has no more power to do a governmental act than the private secretary of the President of the United States. In fact the King cannot choose his own private secretary, lest he should select a man who might seek to interfere with the supremacy of the Ministers. He cannot even name as Lords of the Bedchamber (certain courtiers closely associated with him personally) noblemen not acceptable to the Cabinet.

"The King can do no Wrong." Hence it is that English law has the maxim, "The King can do no

wrong." Instead of being, as is sometimes ignorantly misunderstood, a statement of irresponsible personal despotism, it indicates the impossibility of such. Neither can he do any right—as sovereign. This was the sense of Charles II's witty retort upon an equally witty courtier who wrote upon the door of the royal bedchamber:

Here lies our sovereign lord the King,
Whose word no man relies on;
He never says a foolish thing
Nor never does a wise one.

"'Tis true," replied the King, "because while my words are my own, my acts are my Ministers'." Therefore, if tyranny should be attempted, the responsible Minister or Ministry would be turned out of office by Parliament; and if the criminal law had been violated, the guilty official would be promptly punished by the law courts, while the majestic figure of the sovereign, typifying the nationality, patriotism, loyalty, and imperial unity of all who own the British flag around the seven seas, would still rise calmly above the din of party strife and personal wrong-doing, instead of being dragged into the conflict, with resulting disorganization of government and possibly civil war.

How the King Appoints his Ministers has already been described in Chapter IV, where it was ex-

plained that he does not act upon his own preference, but must bestow the positions upon the leaders of the party having a majority in the House of Commons. As we all will recall, he must name as his Prime Minister the recognized leader of this party, while that man really appoints the other Ministers.

Disappearance of the Royal Veto. We may now examine the principal royal prerogatives. The King was in remote times practically the chief part of the legislature, merely asking the nobles to confirm what they could not well refuse; later he legislated really by the advice and consent of Parliament; still later he formed in fact a third house, in that no act of Parliament could become law without his consent; and though the royal signature is still legally necessary, it has never been refused to any bill passed by the two houses since 1707; and hence the so-called royal "veto" is as much a thing of the past as the feudal system or the Crusades.* To speak of this as part of the royal prerogative is mere fiction or word juggling. As well lecture on the comparative efficiency of long bows and cross bows in modern warfare. Custom even forbids the King to enter either House of Parliament except on certain formal occasions, because long ago he used to appear in

* Though the royal disapproval was final and could not be overridden, it was not strictly a "veto"; for the King simply withheld his signature, and did not kill the bill with a veto message, as does our President.

order to intimidate the members; nor may any member allude in the debate to the opinions or desires of the sovereign.

Appointments and Honours. The royal prerogative of the appointing power is exercised solely by the responsible Ministers or by such inferior officials as have been given the power to fill minor places. By a quaint expression, the Crown is described as "the fountain of honour"; *i.e.* it confers all titles such as peerages and baronetcies,¹ and awards medals or badges, and membership in certain distinguished orders of merit. But appointment to all these honours is in the hands of the Prime Minister, though the King may personally confer the title upon the fortunate recipient.

Commander-in-Chief of the Army and Navy. By another ancient prerogative, the King is the commander-in-chief of the army and navy, as is the President of the United States, whose powers in this, as in many other respects, were copied from the ancient powers of the English Crown; but the duties are performed by those Ministers in charge of these

¹ A baronet is a member of the knighthood, but not of the nobility, and is called Sir, as Sir Walter Scott. His wife, like the wife of a nobleman, has the right to the title Lady instead of plain Mrs. The ladies of the higher ranks of the nobility, however, are usually referred to, as are the higher ranks of peers, by their distinctive titles, as Duchess, Marchioness (the wife of a Marquis), or Countess (the wife of an Earl).

departments, subject to the supervision of the Prime Minister, while not a boat nor a soldier would move at the personal order of the King.

"The Fountain of Justice." In memory of the time when mediæval kings actually heard the pleas of their subjects or sent out judges to right their wrongs, the Crown is called "the fountain of justice." •Legal papers still run in the name of the sovereign and certain offenders are still tried in the King's Bench Division of the High Court of Justice; but the prerogative has disappeared well-nigh completely here, instead, as in many other cases, of having been merely transferred to some representative of the King; for the judicial department, though the judges are selected by the Prime Minister or his fellow-minister the Lord Chancellor, is virtually as unmolested by executive interference as is the judiciary of the United States.

Pardoning Power. The pardoning power might be considered a little rill of the prerogative still flowing down beside "the fountain of justice." Applications for pardon are examined by the Home Secretary and approved or disapproved by him. The King could no more free his own son from the clutches of the law without the consent of that official than could the humblest coal miner swinging his pick in the dark caverns of the earth as he mourns for his wayward loved one.

The King Personally Exempt from Punishment or Suit. Since "the King can do no wrong," at least in legal theory, as explained above,¹ if he were to amuse himself some morning by shooting dead each of his servants as they arrive, it would be no crime in the eyes of the law. If Parliament should consider this conduct conclusive evidence of confirmed insanity, however, they would have him confined in a proper hospital and appoint some person, preferably some near relative of the sovereign, to perform the duties belonging to the royal office under some such title as Regent.²

The King is sued like an ordinary person in civil

¹ See pages 106-7.

² Apparently the President of the United States could not be arrested during his term of office for any crime, not on account of any theory as to his being unable to commit wrong, however, but from the necessity of having some person as the executive head of the government whose liberty cannot be restrained on any pretext. Certainly the President could not be arrested while in office for violating the law of any State, since even minor United States officials are protected from the possibility of arbitrary interference with the performance of their duties, and therefore with the activities of the federal government, by arrest at the hands of State authorities for crimes alleged to have been committed in the performance of their duties, though they can be punished for such crimes by the consent of the federal authorities, or after their removal from office.

It is a disputed legal question, which fortunately no court has ever been called upon to decide, whether the Governor of an American State could be immediately arrested and tried for a serious crime committed while he was in office or whether his arrest and trial would have to be postponed until he was no longer chief executive. Either President or Governor after leaving office is triable and punishable, like any other person, for any crime either personal or official committed while in office.

matters, though his permission must be obtained, on the theory that the sovereign cannot be sued without his consent. Permission is readily given.*

The answer to the objection that the King's legal immunity is unjust and absurd is that practically it is neither, but on the contrary is a necessary part of the system of government by a responsible Ministry through which royal injustice and absurdity have been made impossible. If any King should presume upon his personal immunity, he would soon be taught as effectually as was Charles I, though doubtless not in just the same way, that the liberties of the subject cannot be violated with impunity.

Foreign Affairs. Another of the ancient royal prerogatives is the conducting of foreign relations. This is a duty which it is always necessary to entrust with large freedom of action to the executive. In the United States it is lodged with the President, but is shared by the Senate, in that treaties must receive the approval of that body. In England, however, the Ministers of the Crown conduct all foreign relations, including even the declaration of war, the

* Presidents and Governors, not being sovereign in any sense, but only public servants, may be sued in the civil courts at any time for personal debts or wrongs. But the United States and each of the several States is free from suit without its consent, except by some other sovereign. The States sometimes sue each other in the United States Supreme Court and might be sued there by foreign states; but in practice, claims of different nations against each other are adjusted through diplomacy.

concluding of peace, and the making of treaties, without any confirmation by Parliament or any consultation, further than they see fit, with that body. The more extensive and pressing character of diplomatic problems in Europe necessitates the Foreign Minister's having a free hand and considerable power for prompt and decisive action. Although the Minister manages these affairs in harmony with the general aims and principles of the party, Parliament allows a larger degree of freedom there than in any other department.

The "Foreign Secretary," as he is commonly called, acts in closer and more constant consultation with the Premier than does any other Minister, and the momentous issues which arise in his department are submitted to the most serious consideration of the whole Cabinet. The Premier reads every important dispatch and exercises a firm and unremitting control over the general course of the country's foreign policy. The King also insists more strongly on his right to be consulted in the business of this department than in any other. He sees all the important dispatches and although he can only express and not enforce his views, his advice is here sometimes of great value. This was particularly true of King Edward VII.

The reason for the closer attention by the King and the stricter control by the Prime Minister in

foreign affairs than in other departments is because of the immense consequences of peace or war, national benefit or national calamity, that depend upon the conduct of relations with other countries. We must understand, of course, that, though the Foreign Secretary acts under these necessary limitations, the fact that he is selected because of his eminent qualifications of information and judgment secures for his opinions and leadership great consideration.

[Another difference between this office and all others is the necessity of secrecy in diplomatic affairs. This often makes it proper for the Secretary to reply to questions in Parliament that the public interest forbids his furnishing the information requested. This, and the fact that at least one of the five Secretaries of State must be a member of the Lords, leads frequently to his being chosen from that house.

War and Peace. The prerogative even includes the right of declaring war and making peace, as well as treaties on any subject, so long as they do not involve any tax upon the people or violate the law of the land. The power of the Cabinet, or we might even say of the Prime Minister as the depositary of this ancient royal prerogative, to plunge the country into war seems inconsistent with the supremacy of Parliament. The inconsistency is, however, mainly apparent; for the Premier, even though backed up

unanimously by the Cabinet, would not take such a step without learning the sentiments of the Commons and of the country. An interesting contrast is offered here with the government of Germany, where the power to declare war is lodged in the Bundesrath, or upper house of the imperial Parliament, which represents the sovereigns of the twenty-five states composing the Empire. But it cannot be doubted that the destinies of peace and war are far more removed from popular influence or control in Germany than in England. The difference is in the spirit that permeates the two systems and the extra-legal customs that modify the effect of the formal constitution, thus rendering the apparently despotic power of the Prime Minister far more democratic in fact than the formally less autocratic method of the German constitution.

Many authorities are of the opinion that, notwithstanding the large degree of moral control exercised by Parliament, the power of the Cabinet is in these affairs dangerously extensive. If they should err in the fateful decision for war, neither the Parliament nor the country would have any effective remedy; for, although they could force the resignation of the offending Ministry and the appointment of another more in harmony with the desires of the nation, this would not of itself bring about peace nor heal the public harm. To bring more quickly

to an end a war that should never have occurred would be the extent of their power.

Statutory Orders and Orders in Council. A great authority which has been conferred upon the Crown, acting of course through the proper Minister, is the issuing of "statutory orders" which have the force of law. They are of course subject to repeal by Parliament. The orders relate generally to such subjects as education, public health, etc. Though conferred by Parliament and therefore statutory, this right of the Crown is closely akin to the prerogative right of issuing Orders in Council, a function which in time of war assumes immense importance in regulating the relations with neutral countries in regard to such matters as commerce, blockades, contraband of war, etc.

Head of the Established Church. Derived from act of Parliament, and not a part of the prerogative, is the peculiar function of the English sovereign, due to the union of church and state, of acting as head of the established church. In this capacity the King is supposed by law to appoint the bishops and to exercise other momentous powers, the nature of which will be explained in Chapter XXX. Either the sovereign, or the Prime Minister who actually exercises the power, may be a member of some other denomination,¹ or for that matter even an infidel,

¹ Though the King cannot be a Catholic. See page 99.

as both have at times in the past been men of dissolute lives.

The King not a Figurehead. It is evident, then, that the King, though in theory clothed with such majestic power, is in fact entirely without authority. ~~It is an error, however, to speak of him, as is often done, as a mere figurehead.~~ Though he has no power, he has great influence. He is in constant communication with the Premier, and to a less extent with the other Ministers, and the policy of the Cabinet in all important matters is announced to him. He is thus in a sense a permanent Minister, a member of every Cabinet, but without authority and without "responsibility."

Though the King must be kept informed of government business, he is not consulted in the discussion or shaping of measures, but only receives the report of what the Cabinet has already decided. His opportunity of enforcing his views is thus seriously hampered by the fact that he is invited simply to comment upon an already matured decision in the framing of which he has had no part and which the Ministers will not readily modify, instead of being allowed to participate in the discussion while opinions are still unsettled. For it is one of the peculiarities of the English Constitution that the King is forbidden by custom to attend the meeting of the Cabinet, who have no legal existence except as the King's own

Privy Council.¹ Still, his weight of influence may be considerable on many occasions in matters not concerned with important party policy. We have just observed² how his information and long familiarity with foreign relations through the terms of many Ministries may be of great value. In this branch his advice makes for permanence and steadiness, the two great essentials in foreign relations, and is, even a man of Mr. Gladstone's views thought, on the whole of benefit to the country.

The real position of the King under the English Constitution is well stated by Bagehot as follows: he has "three rights—the right to be consulted, the right to advise, and the right to warn. And a king of great sense and sagacity would want no others."

Attachment of the English to the Limited Monarchy. The English people are strongly attached to their form of government under a limited constitutional monarchy and regard the King with devoted loyalty. Even in our republic, we may observe how strong are the enthusiasm and affection aroused in the people by the personality of political leaders. In England, or for that matter in any monarchy in which the sovereign has for generations conducted himself with true liberality, intelligence, and patriotism, this sense of personal loyalty, which is one of the finest and strongest traits of human

¹ See page 124 for the Privy Council.

² Pages 116 and 117.

nature, is aroused to the highest degree, and makes the King the personified embodiment of the nation, its aspirations, its interests, and its ideals. However fierce may be party strife and the denunciation of party leaders, these men are not the government itself. The King of England must never express any views or commit the slightest act indicating political bias, nor must he ever be referred to or involved in any way in partisan strife. Standing apart from all this, he serves as a buffer to prevent the shock of party antagonism from wrenching the framework of the ship of state.

CHAPTER XI

THE CABINET

Union of Executive and Legislature. In describing a government in which the executive and legislative functions are so much united in the same hands, it is necessary constantly to pass from one to the other. So we return to the Cabinet in discussing the executive, although we have noticed some of its features in describing Parliament.

Cabinet and Other Positions. The Cabinet consists of the heads of certain executive departments, about twenty in number, the principal ones being the First Lord of the Treasury, who is generally Prime Minister, the Secretary of State for Foreign Affairs, the Secretary of State for War, the Secretary of State for Colonies, the First Lord of the Admiralty, the Chancellor of the Exchequer, and the President of the Local Government Board. As merely a Minister, each of these men heads an administrative and executive department; as a member of the Cabinet, or a Cabinet Minister, as it is often called, he is

one of the directing council which carries the party program through Parliament and shapes the general policy of the government.¹

The Ministry, as explained on page 44, includes in addition to the Cabinet a number of officials of less importance, who, like the Cabinet Ministers, must be of the same politics as the party in power, and hold either the headship of certain departments, high executive positions of the second rank, or certain ceremonial positions about the court. Among them are most of the first assistants of the leading Ministers (called Parliamentary Under-Secretaries²), the party whips, and certain officers of the royal household who are in such close personal touch with the King that they must not be of such political views as possibly to impair the harmonious co-operation of the sovereign with his Ministers.³

Sinecures. The Cabinet as distinguished from the Ministry is a counselling and directing rather than an administrative body. Though its members are the heads of administrative departments, their chief duties are shaping and directing the affairs of government and carrying out the party policy as a consistent, unified platform, while the details of ad-

¹ For a complete list of the Ministry, with the Cabinet positions specified, see table at end of this chapter.

² Or Political Under-Secretaries.

³ For a fuller description of the difference between the Cabinet and the Ministry, see pages 44 and 45.

ministration are left to subordinates. Hence there are several sinecures, or offices with practically no duties. One of these, the First Lordship of the Treasury is as a rule held by the Prime Minister, whose hands are full enough with general supervision and the responsibilities of leadership. Three others, the positions of the Lord President of the Council, the Lord Keeper of the Privy Seal, and the Chancellor of the Duchy of Lancaster, are bestowed often upon aged or infirm statesmen whose counsel and experience are desired, but who would not undertake the arduous duties of administration, or sometimes upon party leaders practically all of whose time is required upon the floor of Parliament. While such an office may be called a sinecure viewed as an administrative department, it may as a position of Cabinet responsibility be anything else.

Concentration of Power during War. The growth of the Cabinet in recent years to a number exceeding twenty has impaired its efficiency as a directing council and tended to draw it more into the character of a deliberating body, a sort of select third house of the legislature exclusively in the hands of the party in power. The Premier has consequently fallen into the habit of counselling more particularly with a few of his most trusted colleagues, thus giving occasion for the remark that there was emerging a Cabinet within the Cabinet. This tendency to

gather a small group, capable of prompt and vigorous action, around the leader received formal sanction in the creation of Mr. Lloyd-George's Ministry in December, 1916, during the Great War. The Premier, the Chancellor of the Exchequer, the holder of one of the ancient sinecures, and two more called "Minister without Portfolio" were made "the War Cabinet." This body met daily to direct the war, and since two of its members were very much occupied on the floors of the two houses of Parliament or in the Exchequer, the Premier and the two Ministers without Portfolio formed a group reminding one of a Roman triumvirate or the French Consuls of 1800 with Bonaparte and two assistants. Lord Curzon's duties as leader of the House of Lords allowed him to attend the War Cabinet with some frequency, thus supplying a fourth member; and when Mr. Law's duties permitted him to leave the Commons and the Exchequer, it was really a council of five.

The other Ministers usually known as Cabinet Ministers were officially designated as Heads of Departments and took no part in the direction of the war. The vital Cabinet duties that remained after taking out of their hands the multifarious and far-reaching powers connected with the war left them in a situation hardly to be recognized as a Cabinet in the modern sense of the word. The Premier occupied a position more nearly resembling

a dictatorship and the ordinary Cabinet meetings sank to a lower importance than at any time in modern English history. But we must remember that this was with the full consent of Parliament, involved no suggestion of usurpation, and could be terminated at any time by a simple Parliamentary majority. Though the future will hardly see such an extreme concentration of power and responsibility in so few men, many competent judges expect either that there will develop a permanent and recognized Cabinet within the Cabinet or that the Cabinet will be reduced in numbers. It is not impossible that we have seen the beginning of a process by which the Cabinet will join the Privy Council, which it shoved aside, as an interesting historical relic surviving only as an empty form. That which emerged through the law of change may submerge by the same law.

The Cabinet not Known to the Law. It may be remarked here that there is no such body known to the law as the Cabinet, nor, as a united group, the Ministry. The confidential advisers of the King are supposed to be the Privy Council; but that body, embracing at present over two hundred persons, long ago grew to be so large as to make counselling and secrecy impossible. Membership in it is now only a distinction, carrying with it the title of "Right Honourable." Yet, in accordance with the English

way of retaining ancient forms, the leading Ministers on first taking office are sworn into its membership. The lords and gentlemen who at any particular time compose the Cabinet are the real successors of those ancient advisers and are in fact the persons referred to in modern statutes as "His Majesty's Most Honourable Privy Council."¹

Difficulties in Forming a Ministry.² The gentleman to whom the King's message comes, after the resignation of a Ministry of the opposite party, directing him to form a new Ministry has probably already been considering with himself and his leading party associates the persons to whom he shall offer the various ministerial posts. The presumptive claimants are, in the main, the same men who were Ministers when their party was last in power, unless that has been so long ago that the old leaders have disappeared. Forming a Ministry is sometimes extremely difficult; for rival ambitions must be somehow reconciled, disappointed aspirants soothed, wounded spirits healed, and every influential wing in the party given representation in proportion to its strength. The task of the Prime Minister calls for the most delicate tact, as well as great firmness

¹ See, *e. g.*, the British North America Act, ix., 146. The Judicial Committee of the Privy Council (see page 202) and certain executive departments presided over, like others, by a Minister, are nominally committees of the Privy Council.

² Cf. page 47.

of will and clearness of head; for a great victory at the polls may now be thrown away by bad generalship.

Discussions in Cabinet Meetings. A bill is prepared by the Minister whose department it most nearly concerns and is then discussed in Cabinet meeting. Every member is expected to suggest and criticize with the greatest freedom and vigour, and there is not the slightest idea that in doing so he is intruding upon the rights of the department in question.¹

The Cabinet meets usually once a week. Members are in honour bound to the strictest secrecy; no minutes are kept, and even a private memorandum is looked upon with disfavour.

Unity of the Cabinet. The Cabinet must be a unit upon its legislative program, and hence its members can introduce no measure into Parliament until it has first been threshed out in Cabinet meeting and brought into such shape as to induce all members to accept it, or at least to refrain from opposition. Some of the Prime Minister's hardest work and finest argument consists in convincing his unwilling colleagues. Mr. Gladstone remarked that it was sometimes a harder task to get his measures through the Cabinet than through the House

¹ Of course no Minister would attempt to interfere with the routine administration of another department.

of Commons. The Cabinet is thus in a sense a highly competent third house of the legislature; and its debates result in removing most of the weaknesses of bills before they come before Parliament.

It is very desirable to secure the willing assent and hearty co-operation of the entire Cabinet, and hence it is always sought to come to a general agreement without overpowering the minority by a formal vote.¹

Freedom and Restrictions of the Individual Cabinet Minister. If a member cannot accept the views of the Cabinet on any measure and considers it one that he cannot conscientiously allow to pass in silent acquiescence, his only course is to resign. On the other hand, a Minister must not express himself in public on any Cabinet measure in a sense contrary to the plans of the Cabinet or take up a position that might embarrass his associates on important questions on which the Cabinet has not come to a decision. Such an offence would lead to a private remonstrance from the Prime Minister, and persistence in it would make it necessary for that official to dismiss his indiscreet associate from office. A Minister may, however, introduce a bill on his own individual responsibility on a subject that is not in the party platforms or likely to become a matter of

¹ Cf. page 45.

party controversy, and may speak on non-party questions on either side he chooses.¹

Parliamentary Under-Secretaries. The Minister at the head of several of the more important executive departments has an assistant minister, called the Parliamentary Under-Secretary, or the Political Under-Secretary. The duties of the Minister² are mainly to direct the general policy of his department, to see that its officers are competent and faithful, and to defend in Parliament the measures of the government, particularly those concerning his own department. He makes a mistake if he tries to direct too minutely the work of subordinate officials, just as the captain of a ship might if he sought to teach the engineer how to operate the engines.

Frequently the Minister and his Parliamentary Under-Secretary are members of different houses, so that one can speak for the department in the Commons and the other in the Lords; but in some cases the labours upon the floor of the Commons are so incessant as to require both to be members of that house. The duties of the Under-Secretary are much the same as those of his chief, except that he gives more of his time to the details of administration. He is usually a young man of promise in

¹ Cf. page 45.

² The duties of the different departments are described in Chapters XIII and XIV.

training for the higher positions, and if he makes good as a successful administrator and effective debater, he will probably by middle life be rewarded by being made a Cabinet Minister at the head of a department. If of first rank in the gifts of leadership, he may even attain the highest goal of the ambition of every man in English national politics, the Premiership, which is the equivalent in England to the honour of being made President in the United States.

Permanent Under-Secretaries. Under the Minister at the head of each of the great executive departments is a Permanent Under-Secretary. He and his numerous subordinates are picked and trained men who take no part in party politics and hold their positions as long as they prove efficient, irrespective of what party is in power.

The bulk of the actual running of the department is done by the Permanent Under-Secretary, for he is master of every detail of the office and is not interrupted by the necessity of daily attendance on Parliament during six or seven months of the year. He is as unswervingly loyal to his new chief after a change of Ministry as to his old; for his duty is not to help any party, but solely to serve the permanent interests of the country by doing well whatever the people through their representatives command to be done. The Minister would not expect nor the Permanent Under-Secretary consent

to the betrayal of any personal confidence of former Ministers. But he of course furnishes the fullest information on everything connected with the official business and acts of the department. It can be easily understood that the advice of a capable Permanent Under-Secretary is of high value to a Minister, and that his influence on the government is great and useful. Competent judges consider that this combination of the judgment of the trained expert and that of the statesman of wider experience, fresh from the great outside world and in constant touch with its untechnical human life, is an essential factor in any system that shall at the same time attain the efficiency of trained skill and escape the narrowness and stagnation of official red tape.¹

Cabinet Positions

The holders of the following positions were, in 1915, members of the Cabinet. Sometimes the Attorney-General and a few others of these are members of the Ministry only, but not of the Cabinet. Frequently one man holds one of the sinecures in addition to his regular department, thus making the number of men fewer than the number of offices.

First Lord of the Treasury (almost always the Prime Minister).

Chancellor of the Exchequer.

¹ See Lowell's *Government of England*, i., 176, 187-90.

Lord High Chancellor.
 Secretary of State for the Home Department.
 Secretary of State for Foreign Affairs.
 Secretary of State for the Colonies.
 Secretary of State for India.
 Secretary of State for War.
 First Lord of the Admiralty.
 Minister of Munitions.
 Chief Secretary to the Lord Lieutenant of Ireland.
 President of the Board of Trade.
 President of the Local Government Board.
 President of the Board of Education.
 President of the Board of Agriculture and Fisheries.
 Secretary for Scotland.
 Postmaster-General.
 First Commissioner of Works.
 Attorney-General.
 Lord Privy Seal.*
 Lord President of the Council.*
 Chancellor of the Duchy of Lancaster.*

The Ministry also contains the following members who are not members of the Cabinet:

Solicitor-General.
 Lord Advocate.
 Parliamentary Under-Secretary for the Home Department.
 Parliamentary Under-Secretary for Foreign Affairs.
 Parliamentary Under-Secretary for the Colonies.
 Parliamentary Under-Secretary for India.
 Parliamentary Under-Secretary for War.
 Two Joint Secretaries of the Treasury (one called Parliamentary or Patronage Secretary of Treasury, being the "chief whip").
 Three Lords Commissioners of the Treasury (the assistant "whips").

* *Sinecure.*

The three "household officials":

Lord Steward.

Lord Chamberlain.

Master of the Horse.

SCOTLAND:

Secretary and Keeper of the Great Seal.

Lord Justice-General.

Lord Advocate.

Keeper of the Privy Seal.

Lord Justice Clerk.

Lord Clerk Register.

Solicitor-General.

IRELAND:

Lord Lieutenant.

Lord Chancellor.

Attorney-General.

Solicitor-General.

CHAPTER XII

THE PRIME MINISTER¹

Gradual Development of the Premiership. Before taking up the departments separately, we must complete our study of the Cabinet as the united responsible executive branch of the government by some further description of the position of the Prime Minister. This great office, one of the three most eminent political positions in the world,² has grown up under the custom of the constitution, and in fact was never even referred to in any law until 1906.³ Robert Walpole, from 1721 to 1742, was the first Prime Minister, and the position was at first regarded with jealous dread. But the utility of having executive authority centred in one person caused the position continuously to grow in power

¹ See list of Prime Ministers, by parties and dates, since 1830, at end of this chapter.

² The other two being those of the American President and the German Chancellor. The powerful sovereigns of Germany and Russia are not considered, because as hereditary monarchs they fall into a different class.

³ Lowell, i., 68.

and esteem until it has come to be imitated in almost all free countries of the world that have not followed the American plan called Presidential government.¹

Preferably a Member of the Lower House. The Premier, as the Prime Minister is often called, may be either a lord or a commoner; but the concentration of power in the Commons makes it much better for him to be a member of the "lower" house. Being Prime Minister does not remove a Lord's incapacity to appear upon the floor of the Commons. He would thus have to be represented in the field of conflict by some trusted subordinate, known as the leader of the House of Commons, who, as being of subordinate authority, could do full justice neither to himself, his chief, nor his party.

General Character of the Position. As an aid to reaching a clear understanding of the position of the Premier, let us remember that he answers more nearly than any other person in the English Government to the President in the United States. As he is charged with the responsibility for the entire administration, he, like the President, has no separate administrative department under his charge, but holds one of the sinecures in the Cabinet.² Occasionally a man of rare ability and energy in addi-

¹ For the definition of Parliamentary and Presidential government, see above, page 8.

² See page 121 for names and explanation of these positions.

tion to the weighty responsibilities of the Premiership also administers a particular department, as, *e. g.*, Mr. Gladstone's being Chancellor of the Exchequer or Lord Salisbury's being Foreign Secretary at the same time that he was head of the government; but in the case of the latter, it is to be remembered that the Premier must in any event give much attention to foreign affairs, and that Salisbury by reason of his seat in the Lords was spared the incessant labours which fall to a Prime Minister who is the leader of his party in the House of Commons. Though the exception in the case of Lord Salisbury is thus more apparent than real, no such considerations relieved the situation in the case of Mr. Gladstone, who twice held both the Premiership and the Chancellorship of the Exchequer, itself one of the most burdensome portfolios. Mr. Asquith, for a short time during his Premiership, assumed also the duties of the Secretaryship of State for War; but this was from the first recognized as a temporary expedient, and was terminated by the appointment of Lord Kitchener to that department as soon as its duties assumed unusual importance. Such instances are sure to become still more exceptional under the greater mass of duties which recent times have brought. Consequently it is usual for the head of the Ministry to hold the office of First Lord of the Treasury, an ancient post of honour whose

duties have been transferred to other treasury officials.

The Premier's General Supervision of Other Departments. It is understood, of course, that the Premier selects all the other Ministers, though he and they alike are officially appointed by the King. He directs the general policy of the whole government, and must be consulted on every matter of importance which arises in any department. Since he directs the general policy of all departments, he must know of their conditions and tasks, which involves a vast amount of labour and study. Every Minister has a right to his counsel at any time, and indeed must consult him before taking a new course or introducing, even in Cabinet meetings, a measure of importance.

The fact that the Prime Minister exercises a constant supervision over the Foreign Office, and the reason for this, are explained at pages 112 to 114, which should be re-read at this point.

Settling Differences between Ministers. If differences arise between Ministers they must be referred to the Prime Minister. His decision, however, is not necessarily final; for in these clashes between colleagues in matters relating to their departments, or in regard to any decision of the Premier as to measures or policy, a dissatisfied Minister may carry his grievance to the Cabinet,

either by friendly agreement with the Premier or without regard to his wishes in an attempt to override him. The extent to which the head of a Ministry will submit to such appeals or reversals of his policy depends upon the vigour of his personality and his hold upon his Cabinet; but it is safe to say that one who often submitted to such treatment could not long hold his position.

The Minister who is overruled must either loyally submit or resign.

The Premier's Appointing Power. In addition to these duties the Prime Minister appoints all the more important officials, as *e. g.*, his fellow-Ministers, ambassadors, bishops, all the higher men in the various departments, and the highest judges. Of this last group are the Lord Chancellor, the Lord Chief Justice, the Lords of Appeal in Ordinary, who discharge for the House of Lords its functions of a supreme court, and the Lords Justices of Appeal, who hold the highest court of appeal below the House of Lords. All other judges are appointed by the Lord Chancellor.¹ The varied duties of guiding legislation in Parliament, marshalling party forces, and conducting administration call for character and ability of the highest order.

As the Ministry is appointed by the Prime Minister, it also hangs upon him. The resignation of

¹ *Statesman's Year Book* for 1915, p. 36.

any other Minister only creates a vacancy, but his resignation or death puts an end to that Ministry entirely. If he should resign because of (say) ill health, or any cause other than a defeat in Parliament, the King would, of course, appoint as his successor the one among his colleagues who at the time stood next in party leadership, and the new Premier would make up his Ministry of very much the same men already in office, though he would probably take advantage of the opportunity to shoulder out a few members who had disappointed expectations. It would nevertheless be a new Ministry and would be called by his name, as when Mr. Gladstone's fourth Ministry was succeeded by Lord Rosebery's, or Lord Salisbury's third by Mr. Balfour's.

Prime Ministers Since the Passage of the Great Reform Act of 1832.

~ LORD GREY (<i>Liberal</i>)	1830-34
~ LORD MELBOURNE (first Ministry— <i>Liberal</i>) July-Nov.	1834
SIR ROBERT PEEL (first Ministry— <i>Conservative</i>)	1834-35
~ LORD MELBOURNE (second Ministry— <i>Liberal</i>)	1835-41
SIR ROBERT PEEL (second Ministry— <i>Conservative</i>)	1841-46
~ LORD JOHN RUSSELL (first Ministry— <i>Liberal</i>)	1846-52
LORD DERBY (first Ministry— <i>Conservative</i>) Feb.-Dec.	1852
~ LORD ABERDEEN (coalition <i>Liberal-Peelite</i> ¹)	1852-55

¹ The Peelites, followers of Sir Robert Peel after he lost the support of the bulk of the Conservative party by repealing the tariff on grain, generally drifted into the Liberal Party.

~ LORD PALMERSTON (first Ministry— <i>Liberal</i>)	1855-58
LORD DERBY (second Ministry— <i>Conservative</i>)	1858-59
~ LORD PALMERSTON (second Ministry— <i>Liberal</i>)	1859-65
~ LORD JOHN RUSSELL (second Ministry— <i>Liberal</i>)	1865-66
LORD DERBY (third Ministry— <i>Conservative</i>)	1866-68
BENJAMIN DISRAELI* (first Ministry— <i>Conservative</i>) Feb.-	
Dec.	1868
~ WILLIAM E. GLADSTONE (first Ministry— <i>Liberal</i>)	1868-74
DISRAELI (second Ministry— <i>Conservative</i>)	1874-80
~ GLADSTONE (second Ministry— <i>Liberal</i>)	1880-85
LORD SALISBURY (first Ministry— <i>Conservative</i>)	1885-86
~ GLADSTONE (third Ministry— <i>Liberal</i>) Feb.-July	1886
LORD SALISBURY (second Ministry— <i>Conservative</i>)	1886-92
~ GLADSTONE (fourth Ministry— <i>Liberal</i>)	1892-94
~ LORD ROSEBERY (<i>Liberal</i>)	1894-95
LORD SALISBURY (third Ministry— <i>Conservative</i>)	1895-1902
ARTHUR BALFOUR (<i>Conservative</i>)	1902-05
~ SIR HENRY CAMPBELL-BANNERMAN (<i>Liberal</i>)	1905-08
~ HENRY HERBERT ASQUITH (<i>Liberal</i> to 1915; from 1915	
coalition <i>Liberal-Conservative</i>)	1908-16
DAVID LLOYD-GEORGE (coalition <i>Liberal-Conservative</i>)	1916-

* From 1876, Earl of Beaconsfield.

CHAPTER XIII

THE TREASURY

Importance of the Chancellorship of the Exchequer.

The Minister over the treasury department is called the Chancellor of the Exchequer. There are certain boards and officers but they have no control. The Chancellor of the Exchequer is one of the most important members of the government, for two reasons; first, he has the general oversight over the amount of money which each department shall spend; and second he devises the taxes by which the government is supported. He has thus a sort of superintendence over both income and outgo. This is the office in which Mr. Gladstone made himself famous as a Cabinet Minister and in which Mr. Lloyd-George at a later time made himself so passionately hated and admired. It is an office which, with the fearful burden of war debts and the growing tendency to correct social and economic injustices by means of taxation, promises to become still more important in future. Its holder is looked upon as

second in importance only to the Prime Minister; and if he measures up to the wider responsibilities of his position, he is manifestly material for the making of a future head of the government.

Preparing the Estimates. In the autumn in preparing his proposals to be made to Parliament in the following February, the Chancellor of the Exchequer has the head of every other department give him an itemized estimate of the exact sums of money which will be needed to support his department for the coming year. These estimates are made out by the experienced under-officials and are passed upon by the head of the department in question. If the Chancellor of the Exchequer objects to any item or wishes to reduce its amount, he and the Minister seek to adjust the matter. If they cannot agree, they carry it to the Prime Minister, and if he cannot bring them together, they take it before the Cabinet, whose decision is final.

Control over Other Departments. The Treasury also has the right to veto certain contracts by other departments, to forbid changes in the departments which are likely to involve later expense, and to authorize a department to use for another purpose any surplus moneys remaining over from the department's apportionment or from other unexpended appropriations. And lastly, the Treasury has at its disposal a certain limited sum which it may use

for any emergency, though there may have been no law passed for that particular object.¹ Money matters are liable to lead men into complications, difficulties, and burdensome extravagances, and hence these wide powers of oversight which the Chancellor of the Exchequer as guardian of the national purse is given over his associates.

The Budget. Having received the estimates from the various departments and finally scaled them to the amounts at which they are to stand, the Chancellor of the Exchequer is ready to report his budget. This consists of all the items of expense for the various departments and the taxes by which it is proposed to meet them. After having been gone over in Cabinet meeting, it is presented to the House of Commons sitting in Committee of the Whole soon after the opening of Parliament in February. Its passage through Parliament is described at page 63.

Sources of the Revenue. The revenues are chiefly from the tariff, or customs duties, income and inheritance taxes, the internal revenue, and the post-office. Import duties are imposed for revenue only, on tea, coffee, chicory, dried fruit, tobacco, wine, whiskey, and a few other articles, and in order to avoid giving any advantage by "protection" to one business over another, an equal internal revenue is

¹ Lowell, i., 124-6.

collected on any of these articles produced within the country.¹

Fixed Charges and Annual Appropriations. A few charges of a permanent and steady character are fixed by a standing law and do not have to be voted annually. These are interest on the public debt, the support of the royal family, the salaries of judges, and a few others of trivial amount²; but all other appropriations are for one year only, and hence the budget is an annual task. The origin of this custom was connected with the long struggle of the representatives of the people to restrain the despotism of the King. At last the custom was adopted of allowing the government revenues for one year only, and of permitting the maintenance and discipline of the standing army for one year only. So long as these two rules are observed, tyranny is impossible.

¹ We should bear in mind that our entire discussion at this point is confined to the finances of the central, or general, government of the United Kingdom. Every city, county, and parish in England, Ireland, and Scotland, as well as every colony in the Empire, has its own income from taxation by which to meet its own public expenses, without any connection with the finances of the central government, except that the central government to a certain extent contributes to the assistance of certain local governments.

² Lowell, i., 120. Cf. page 26 above and note.

CHAPTER XIV

OTHER EXECUTIVE DEPARTMENTS

Foreign Affairs, Colonies, and India. These three departments include some of the most important duties with which the government is charged. They are not treated in this chapter, where they might be logically expected, for the reason that a full account is given at other places at which some notice of them is necessary in connection with associated topics. The duties of the Secretary of State for Foreign Affairs are described at page 113, of the Secretary of State for the Colonies at pages 270 and 272, and of the Secretary of State for India at pages 311 and following.

War

The War Office and the Minister of Munitions. The Secretary of State for War has nothing to do with determining questions of war and peace, except as every Minister has by his influence and vote. His duty is to see that the country's army is kept in proper condition to meet the emergency should war

arise. The Secretary of State for War is assisted by a small board or council consisting of the chief officers of the army, but they cannot veto or in any way control his acts.

An excellent illustration of the flexibility of the ministerial system was afforded during the Great War by the creation of a new department to relieve the Secretary of State for War of a part of his duties, to redistribute the unusual burdens, and to meet the peculiar problems of a situation which threatened to overwhelm a government and people organized so preponderatingly for peace as to find themselves almost entirely unprepared for a gigantic struggle of land forces. The situation was mixed up with the personality of two of the existing Ministry. Lord Kitchener, in charge of the War Office, was excellently qualified for the duties of raising and directing a vast army, but very much lacked certain qualities necessary to meet the economic and human elements of the problem of drawing out the industrial forces for equipping his soldiers. The Ministry of Munitions was created and placed in charge of David Lloyd-George, a man of great executive ability and wonderful talent for bringing the English working-man, jealous of his individual and trade-union privileges, into such subordination to the great national effort as to save the state from being overwhelmed by the military organization of Germany.

The duties of the Minister of Munitions are to exercise such supervision over government and private manufactories as to secure the most loyal and efficient co-operation of employers and labourers, and hence the largest possible output of arms and ammunition for the armies at the front. Even private plants are reduced to a semi-military organization, and the control of private business is carried further than modern England has ever before dreamed of permitting.

Other ministerial positions created to meet the necessities of the Great War were the Minister of Blockade, the Food Controller, and the Shipping Controller.

The Army. Before the Great War, the armed land force of the United Kingdom consisted of the regular army, the army reserve, the special reserve, and the territorial army. Men enlisted in the regular army for twelve years. Most served seven years of this time with the colours and five years with the army reserve. The special reserve consisted of men enlisted for six years. They were given five months in camp the first year and a few weeks' training every year for the remaining five. The reserves of both kinds are at once called to the front in case of need.

The territorial army consisted of what in the United States is called the militia. The men were

given two weeks' instruction in camp every year. They could not, without their consent, be sent out of the country.¹

In a great war the regular army was increased by voluntary enlistments. England's system was entirely voluntary, unlike the systems of countries on the continent of Europe, which, having powerful rival states immediately upon their borders, consider it necessary to force all able-bodied men to serve for a term of years in the army. In the gigantic conflict with Germany and her allies England raised a volunteer army of five million men—incomparably the greatest expression of patriotic devotion through voluntary enlistments that the world has ever seen. But it finally proved necessary to adopt conscription in order to draw out the full military resources of the country. The Great War has so revolutionized the British army and military ideas as to render it doubtful whether the system previously in operation will long be retained. The near future will reveal whether England will modify her previous system as described above more or less towards the continental system of universal compulsory service in times of peace.

Organization of the Navy Department. The navy is under the Board of Admiralty, whose head is a Cabinet Minister, called the First Lord of the

¹ The "yeomanry" are simply the cavalry part of the militia.

Admiralty. He has general direction, and the other eight members (most of them eminent naval officers) have charge of various branches of the naval service. These are, of course, not in the Ministry.

The management of modern war vessels requires long and careful training. Hence the naval force consists of men enlisted for a term of twelve years.

The Committee of Imperial Defence. For the consideration of the large problems of naval and military policy, apart from the more technical questions which naturally fall to the army and navy departments, there is the Committee of Imperial Defence. It consists of the Prime Minister as chairman, together with the heads of the departments of foreign affairs, war, navy, treasury, colonies, and India, the Chief of the Imperial General Staff, and several other high naval and military officials. It has its regular permanent secretary and pursues a continuous policy in organizing the nation's resources against the emergency of war.

Contrasts between Foreign and Home Affairs. It is remarkable how much of the business of the government, even in time of peace, is taken up with affairs away from home. There is constant danger that an ambitious statesman will be so dazzled with the idea of playing a brilliant part in the stirring affairs of world politics that he will allow the more direct interests of the people and the more prosaic

things making for their permanent welfare to suffer neglect. On the other hand, a Prime Minister whose heart is warm for doing good for his own people may forget the necessity for strength and foresighted planning in foreign and imperial affairs. Disraeli and Gladstone among modern English statesmen illustrate respectively in striking fashion these opposing tendencies.

Internal Interests of the Kingdom

So far in this chapter we have been taken up with the departments concerned with foreign and imperial interests. Let us turn now to those which touch more immediately the life of the people.

The Home Department is under the Secretary of State for the Home Department, or, as he is briefly called, the Home Secretary. He is in charge of a great variety of duties, such as granting or refusing petitions for the pardon of criminals, the supervision of the police, and the management of prisons. He also appoints and removes certain city magistrates, and has the duty of enforcing, through a corps of inspectors and commissioners, the numerous laws regulating the hours, safety, and conditions of labour in mines and factories. In addition to all these numerous duties, requiring an infinite acquaintance with detail, he has a right of veto over the by-laws

of county and city councils, except in the case of nuisances.

It is understood of course that all these things are said to be done by the King and that the Secretary simply advises such or such action. As a matter of fact, as in all the other departments, the King is the one who may merely advise, and the word of the Secretary is the word that controls.

The Local Government Board. A Cabinet Minister called the President of the Local Government Board has control over poor relief, old age pensions, registration of births and deaths, sanitation, roads, etc. He also exercises oversight of the local legislative bodies of the counties and cities with a large degree of authority for preventing imprudent or extravagant action.

A peculiar illustration of the difference so often observed between the nominal and the real in the English Constitution, is the fact that the Local Government Board and the four or five other boards whose heads hold the positions of responsible Cabinet Ministers are nothing more, as Professor Lowell expresses it, than phantom boards. The President is a quorum and conducts the business, and the Board never meets.

The Board of Trade. The President of the Board of Trade is a Cabinet Minister of great importance, in that he has general supervision over railroads,

trolley lines, the equipment and safety of merchant vessels, and the granting of copyrights and patents giving authors or inventors the sole right to sell their productions. His control is exercised through "provisional orders" made after investigation on the complaint of aggrieved persons or on his own motion. Such orders, if not complied with, are given force of law through confirmation by Parliament.

The railway problem in England, as in the United States, has called for special regulation. Parliament fixes maximum rates, allows the Board of Trade extensive powers in provisional orders, and provides a court known as the Railway and Canal Commission, composed of judges and railway business experts. To this body the Local Government Board may refer any case in which their orders touching common carriers by land or water within the United Kingdom are disregarded. The functions of the Commission are similar to those of the Interstate Commerce Commission in the United States, but its powers are more extensive and stronger. The English Commission can regulate more subjects, such as the safety of passengers, the safety and hours of employees, sidetrack and terminal facilities, and correcting unjust and unreasonable rates, though it has so far declined to accept the doctrine that it may undertake the fixing of general rates *ab initio*.

Non-compliance with its orders incurs a penalty of £100 a day. More important, it is not merely a commission, as its name would imply, but really a court. Its findings are final in all matters of fact, but appeal lies from its decisions in points of law to the Court of Appeal, the highest court of civil jurisdiction below the House of Lords.¹

The Post-Office. The Postmaster-General in England has supervision over the telegraph and telephone, as those have been made parts of the postal service under government ownership and management as an obvious means for the transmission of news.² The parcel post, rural free delivery, and postal savings banks are highly developed. The Postmaster-General is thus not a political character in any such sense as the Foreign Secretary or the Chancellor of the Exchequer, but is in effect the head of a vast business.

The population of England is so dense and distances so short as to give the post-office a great advantage as compared with the post-office in a country of vast extent, like the United States, including many long

¹ For the Court of Appeal and the House of Lords, see pages 182 and 199-200 below. On the functions of the Board of Trade and the Commission, see elaborate statement in *Ripley's Railway Problems*, 602-49, reprinting "The English Railway and Canal Commission," by S. J. McLean, from *Quarterly Journal of Economics*, xx. (1905), 1-55; brief statement, *Britannica*, ii., 213; xxii., 227-8.

² Telegraph was taken over by the government in 1870; the telephone in 1912.

and thinly settled stretches; and hence the vast business of the English post-office nets the government a handsome revenue.

Agriculture and Education. These departments are each generally under a Minister who is counted a member of the Cabinet. Though their departments are not strictly political, as are most of the others, the vital importance of the interests committed to their charge leads generally to their heads being included in the Cabinet.

Law Officers

No Department of Justice. England has no distinct department of justice like most modern countries. The duties of such a department are distributed among the Home Secretary, the Lord Chancellor, and the Law Officers of the Crown. The first has already been described; a few words will indicate the general character of the others.

The Lord Chancellor is one of the most ancient officials of the kingdom and is still one of great importance as the head of the judicial system. It is strange that the official answering to the Chief Justice of the Supreme Court in the United States as the presiding head of the highest court in the land, should go into and out of office as a member of the Cabinet with the changes of political parties; but, like many usages of the English Government that

appear absurd upon their face, this works well because not abused. The Lord Chancellorship represents the highest ambition of English lawyers.

Judicial Duties of the Lord Chancellor. The Lord Chancellor's judicial duties are now to sit as a member of the Court of Appeal (next to the highest court in the land), to sit with the Lords of Appeal in the House of Lords when that house is acting as the supreme court of the United Kingdom, and to sit as a member of the Judicial Committee of the Privy Council, which is the supreme court for questions coming from the church and from colonial courts.*

The Lord Chancellor's Appointing Power. The Lord Chancellor appoints the county judges and the justices of the peace, in the selection of whom he is guided by information and advice from local officials; and he also chooses all the higher judges, except himself, the Lord Chief Justice, and the Lords of Appeal in Ordinary, who are selected by the Prime Minister. The Lord Chancellor also appoints many preachers of the Church of England to congregations whose pastors are in the appointment of the Crown.

As Presiding Officer of the House of Lords. Another duty of the Lord Chancellor is to preside over

* The judicial system is described in Chapters XVI-XVIII. Although the House of Lords is legally the supreme court, only the learned judges who are members ever take part in those duties.

the House of Lords. His functions and powers in that position have already been described at page 96, which should be re-read here as a part of this chapter.

Mingling of Functions in the Lord Chancellor.

This ancient official therefore represents in the highest degree the combination of the powers of government in the same hands, as opposed to the American principle of their separation among different departments; for he is a real member of the executive in being a Cabinet Minister, an active judge in the three highest courts, and when a peer (as he practically always is), a member of the upper house of the legislature, in which he may not only vote, but may leave the chair and take part in debate.

The Attorney-General and the Solicitor-General.

The principal law officers of the Crown are the Attorney-General and his colleague and substitute the Solicitor-General. These are always members of the Ministry, as they go in and out of office with changes of party, but they are generally not members of the Cabinet, as they take no part in the directing councils of the party leaders. In Mr. Asquith's Ministry, however, the Attorney-General was a member of the Cabinet.

The duties of the Attorney-General are much the same as those of the official of the same title in the United States Government; but he has not such a

large degree of direction and discretion in these matters, and in general his responsibility may be said to be less extensive. He and the Solicitor-General prosecute a few important cases, give legal advice to the Ministry, and defend the legal points of the Ministry's bills in Parliament.¹

The salaries of the Attorney-General and Solicitor-General are large and the honour great, and from men who have held these positions are filled the higher judgeships. Their positions are therefore worthy objects of ambition for the highest class of English lawyers.

¹ It is interesting to notice how the officers derived from these in the United States sometimes bear the title of the one and sometimes of the other, as the Attorney-General of the nation or the State, or the Solicitor of a judicial circuit; while in many cases some new title, as Prosecuting Attorney or Commonwealth's Attorney, is substituted.

CHAPTER XV

THE PERMANENT CIVIL SERVICE

Who Compose the Permanent Civil Service. By the permanent civil service is meant those officials or employees who merely carry on the regular operations of the government, such as the post-office, etc., as laid down by law, but have nothing to do with making the laws or directing the political policy of the government. They are permanent, because they do not go into or out of office with party victory or defeat, like the Ministers. They are civil officers in distinction from those who are naval or military.

Political and Non-Political Officials. There is in England, says Professor Lowell,¹ a "sharp distinction between political and non-political officials." That is to say, the men who lead parties and shape legislation in Parliament are recognized and followed as political chiefs because through them the people can have their will enacted into law; while the men who have simply the faithful and competent

¹ L., 145.

carrying out of existing law are looked upon by the people as a business man looks upon his clerks—to be retained or discharged because of their possessing or lacking efficiency and honesty. This seems so reasonable that it is surprising that it should not be universally recognized by all except persons having some private interest to serve; and yet there are thousands of respectable citizens in the United States today who regard it as a grievance to have their letters handed to them or delivered to their correspondents a thousand miles away by an honest, capable, and courteous young man who happens to disagree with them on the tariff or the future independence of the Philippine Islands.

As in this country, civil officials (the Ministry, of course, excepted) are not allowed to sit in Parliament—a very useful rule for preventing the executive from buying the support of members by appointments to office.

Civil Service Reform versus the Spoils System.

By civil service reform is meant making appointments to government positions depend on merit instead of political favouritism. The opposite practice, of appointing persons because of their services to the successful party at the last election, is called the “spoils system,” because it treats the public offices as spoils of war to be divided among the politicians, instead of public trusts belonging to the

people and to be administered for their benefit. Fortunately civil service reform has made great progress both in England and the United States, though, as will be later explained, it has been extended much further in the former.

Necessity of Examinations in Selecting Employees.

Fitness for administrative office can be discovered in several ways; but the only way that can be used on a large scale in appointments to government positions without leaving the way open for insincere politicians to evade the real intention of the law to get the best employees is a competitive examination. There is no possibility of pretending that a grade of 50 assigned by an impartial board of examiners is better than a grade of 90; whereas if the law simply directed the head of a department to appoint the person whom investigation proved to be the best for the public service, the politician could without the possibility of being conclusively contradicted say that the meanest corrupt ward heeler in the city met those requirements. We can hardly hope to see politics on such a high level that politicians would voluntarily appoint only the best subordinates; nor can we hope to see politics very pure in the hands of even the best leaders so long as we keep before them the constant temptation to use the offices as rewards for their friends.

Limitations on the Principle. There are limits

to the usefulness of an examination for selecting government appointees. These must be sensibly recognized, or else the public will become so impatient of the absurdities as to throw over the whole system, and hence lose the benefits which it contains. The highest positions cannot be filled in this way, for the reason that their holders should possess in much larger degree than is necessary with others certain qualities, such as judgment, moderation, moral courage, common sense, wide experience, which cannot be discovered or tested by a written examination. But the experience of England, as well as the light of reason, teaches that it can, with the most beneficial results, be applied to a far greater number of positions than is done in our country.

Two Principles on which Examinations may be Based. There are two different principles which might be adopted by a government in making out examinations for testing the fitness of applicants for these administrative positions. One is to make the questions such as to discover the preparation of the person for immediately performing the duties of the particular position sought. This is in general the character of the civil service examinations in the United States, though the examiners are fortunately liberating themselves to some extent from this limitation. The other is to ask such questions as test rather the natural ability and general education of

the applicant. This is the principle forcibly urged by Lord Macaulay at the adoption of the examination system in England, and the one on which their examinations are based, except for positions in which a certain amount of technical skill is necessary from the first, as, *e. g.*, in the case of machinists. The advantage of Lord Macaulay's system as adopted in England is that it brings into the government service men and women of natural ability and broad education who will quickly learn the routine duties at which they are first placed, and who are capable of developing into valuable public servants.

Excepting merely unskilled labourers, all positions in the English civil service are awarded to candidates successful in the examinations. The appointing power in England does not have the right to choose between the three highest contestants, as is the rule under our system with the view of selecting the applicant best suited by personal qualities for the position in question. Candidates are appointed in exact order of the standing they have earned, though the tests include physical examination and personal interviews. Except for merely clerical posts, the examinations are of such a grade that trial by any except university graduates is almost hopeless. A glance down the list of appointees shows almost all bearing degrees from the great universities, and most with a good number of academic honours. A con-

siderable portion of the best young intellect of the country goes each year into the civil service, and the result is government by gentlemen, but a corps of gentlemen who are highly educated and rigorously selected professional administrators. Whether it is democratic or undemocratic depends entirely upon your definition of democracy.

No "Political Pull." Political influence has thus been so thoroughly eliminated in securing office or promotion that the attempt to use it is treated "as an admission on the part of such officer that his case is not good upon its merits."¹ All postmasters and revenue officers, all clerks in government departments, obtain and hold their positions by merit alone. A member of Parliament would no more think of trying to have the postmaster discharged because he belonged to the defeated party than because he was a member of a different church.

Forces Favouring Civil Service Reform in England. It was far easier for the friends of good government in England to secure the adoption of the merit system of appointments and promotions to office than in the United States, for three reasons. First, the English have a deep respect for what is called "vested right," *i. e.* a person's right to whatever he has held for a long time.² Second, the parliamentary system

¹ Lowell, i., 170-1, quoting from the Admiralty Office.

² *Ib.*, i., 153-4.

of government offers little opportunity to members of Parliament to demand offices for their supporters under the threat of voting against the party leaders; for the voters choose their representative primarily to support the Ministry of which they approve and would not tolerate disloyalty to this trust in order that a politician might pay political debts to other smaller politicians in which the general public has no interest.¹ And third, the political life of England, from being a hundred years ago very corrupt, has come to be perhaps the freest from the grosser forms of corruption of any great popular government in the world.²

Civil Service Pensions. Public servants who have served for ten years may retire on a small pension on becoming sixty years of age or on becoming physically incapable of work. The employees cannot be expected to exhibit fidelity and efficiency unless they are assured of the tenure of their positions so long as they do manifest these qualities, and the necessary familiarity and skill in their duties cannot be attained without long service. But the salaries are too low to admit of much saving, and hence some system of civil service pensions is a necessity for the successful and efficient operation of the administrative machinery of the government.

¹ Lowell, 171-2.

² On the insidious influence of money through the practice of "nursing" a constituency, see below, page 218.

PART III
THE JUDICIARY
CHAPTER XVI

THE CRIMINAL COURTS

Complicated System. Though the English system of courts has been greatly simplified of recent years, the fact that it grew by irregular additions through many centuries renders it still quite complicated. Probably the best method of making it clear will be to take up first the administration of criminal justice, trace that from the lowest to the highest court; then do the same with the courts dealing with civil cases; and lastly, give a view of the judicial system as a whole.

The Justices of the Peace. The lowest judicial officials in England are the justices of the peace. There are many of these in every county, drawn usually from the landed gentry in the country and the successful men of business in the cities, and serving without any pay.^{*} They are generally not

^{*} For the appointment and tenure of all judges, see page 203.

educated as lawyers, though they of course acquire considerable knowledge by practice.

Clerk of Petty Sessions. This lack of technical knowledge is met by the requirement that they shall choose as a recording officer and adviser a person who is not only qualified as an efficient secretary, but is also a lawyer of long training and practice. This official, known as the Clerk of Petty Sessions, advises the justices on all points of law, both in conducting cases and in rendering their decisions, while they contribute their common sense, experience in affairs, and judgment on matters of fact.

Powers of a Single Justice. The powers that a single justice may exercise may be summed up as three: first, issuing warrants of arrest; second, trying without a jury trivial offences, and third, binding over for trial at a higher court and granting bail to persons whose offences exceed his jurisdiction.

The first and third items require no explanation. In regard to the second, in the pettiest offences the single justice may try the case without a jury. There are also many other petty offences which he may either dispose of in the same way or send up to a higher court; but he cannot in these cases impose fine or imprisonment exceeding twenty shillings or fourteen days, even though the higher court might inflict a heavier penalty.¹

¹ Alexander, 57.

The Petty Sessions. Misdemeanours¹ above those of ordinary police court jurisdiction are tried by two or more justices sitting as a Court of Petty Sessions in regularly designated places known as petty sessions court-houses. These are dotted over the county so as to bring justice near to every man's door. The two or more justices present judge both law and facts without a jury. The accused, if convicted, has the right of appeal for a complete new trial to the Court of Quarter Sessions,² or with certain restrictions of an appeal on points of law to the High Court of Justice in London.³

Summary Jurisdiction. The trial of an offender by Petty Sessions is known as summary jurisdiction; *i. e.* it is prompt, quick, and cheap; and in fact it disposes of the vast mass of lesser misdemeanours above petty police court cases. The accused cannot demand to be tried summarily; for if the justices think his offence sufficiently serious, even though they have the right to try it, they will bind him over to the Quarter Sessions or the Assizes.⁴ Nor can summary trial be forced upon the accused; for the

¹ Crimes are divided into misdemeanours (*i. e.* minor offences), and "high crimes," or felonies (*i. e.* serious criminal acts). Violations of city ordinances are not ordinarily spoken of as crimes.

² For Court of Quarter Sessions see page 167.

³ Lowell, ii., 454. For the High Court of Justice, see page 176 below.

⁴ For definition of Quarter Sessions and Assizes, see pages 167 and 176.

justices must explain to him his right to be tried by jury in the Quarter Sessions or the Assizes, informing him that he will be immediately tried by themselves summarily if he does not choose now to claim the right of trial by jury before the higher court.

The court of summary jurisdiction (*i. e.* the Petty Sessions) can impose no heavier punishment than three months' imprisonment or a fine of £20, though a higher court trying the same case with a jury might inflict a severer sentence.¹

Quarter Sessions. Next above the Court of Petty Sessions stands the Court of Quarter Sessions.² This consists of all the justices of the peace in the county, or so many of them as attend, at least two being necessary. Yorkshire and Lincolnshire are each divided into three parts for the purpose of the Quarter Sessions, the justices and courts of each division being as separate from the others as those of any two counties. Many large cities enjoy the privileges of a county³ and have their own Court of Quarter Sessions. In fact any city incorporated as

¹ The Petty Sessions may, with the consent of the parent, try summarily any case against a child, except homicide; but a convicted child under fourteen years of age cannot under any circumstances be sentenced to imprisonment by any court, but must be placed in a reformatory or otherwise dealt with as its interests seem to require.

² Or General Quarter Sessions, whence the custom in some American States of calling the principal criminal court the Court of General Sessions.

³ See page 230.

a borough may have this arrangement. Thus we have County Quarter Sessions and Borough Quarter Sessions; but in the latter there is a paid professional judge who conducts the court as its sole judge, like a judge with his jury in an ordinary criminal court in America.

In the Quarter Sessions all questions for the decision of the bench are settled by a majority vote of the justices participating.

If business is heavy, the justices may divide into groups, each group conducting business as a complete court.

The Clerk of the Peace. Though, as stated on page 165, the justices do not generally possess legal training, yet it is a fact that the one of their number whom they choose to act as their permanent chairman of Quarter Sessions is usually a lawyer.¹ None the less, the entire bench of justices for the county, like the smaller groups in the various sections of the county with their Clerk of Petty Sessions, are required to elect as their clerk and legal guide a lawyer of long standing. This official is known as the Clerk of the Peace. Like the similar officer in the Petty Sessions,² the Clerk of the Peace gives the justices all necessary assistance during the course of the trial, and after the hearing of evidence and argument, advises them of the law in the case. It is, as de-

¹ Porritt, III.

² See pages 165-6.

scribed above, a method of combining technical training with the freer non-professional outlook.

Jurisdiction of the Quarter Sessions. Besides a limited class of civil business, the jurisdiction of the Quarter Sessions includes all criminal cases except, first, mere police court offences, and second, a few cases which are of the most serious character or which involve difficult questions of law. This court is, in fact, the great clearing house for criminal justice, as much the larger portion of all indictable offences¹ in the kingdom are tried in the Quarter Sessions of the counties and boroughs.

Original, Appellate, and Concurrent Jurisdiction. In order to understand some functions of the courts which will presently appear, it is necessary at this point to define the terms which stand at the head of this paragraph. The *original jurisdiction* of a court means its right to try a case in the first instance. *E. g.*, a single justice has original jurisdiction in petty police court offences, such as simple disorderly conduct.

By *appellate jurisdiction* is meant the right of a court to try a case over again on appeal from a lower court in which it has already been tried. *E. g.*, the Court of Quarter Sessions may in many instances re-try on appeal the case of a person who has been

¹ Indictable offences include all above the jurisdiction of a mere police court. For fuller account of the indictment, see pages 174-5.

convicted in the Court of Petty Sessions, and may either confirm or reverse the verdict first given.

By *concurrent jurisdiction* is meant the right of either of two courts to try a case. *E. g.*, except in a few cases, either the Court of Quarter Sessions or the Court of Assize (the court next above the Quarter Sessions) can try in the first instance any of the offences which come within the jurisdiction of the Quarter Sessions. That is, the proper official may send the accused before either court, choosing the one which meets first or in which he believes stricter justice will be administered.

Appellate Jurisdiction of the Quarter Sessions. The appellate jurisdiction of the Court of Quarter Sessions extends both to law and fact. That is, it may on re-trial reverse the decision of the Court of Petty Sessions, either because the latter court decided wrongly as to the facts as shown by the evidence, or because it misinterpreted and misapplied the law governing the case. Also, new evidence may be heard on the appeal. In brief, the appeal to the Quarter Sessions secures an entirely new trial, the same as if the case had been originally begun in that court. But it is to be noted that, though the Court of Quarter Sessions tries all criminal cases in the first instance by a jury, in trying a case on appeal it uses no jury. It is evident, however, that the Clerk of the Peace, solving legal difficulties as they

arise and at the conclusion of the evidence and argument explaining the law bearing on the case, is in effect a judge in the American sense, and that the justices are virtually a standing jury of more than usual intelligence, training, and authority.

What Cases May be Appealed. The law governing the right of appeal from the lowest court to the Quarter Sessions is too complicated to attempt here more than the following rough summary:

Cases of petty police court character may be appealed from a single justice to the Quarter Sessions if the convicted person has been sentenced to imprisonment without the alternative of a fine;

Cases in which the punishment exceeds a certain limit may be appealed from the single justice;

Cases of conviction before a single justice may often be appealed although an appeal could not be made if the accused had been convicted of the same offence before two or more justices.

Many cases may be appealed from the Petty Sessions for a new trial before the Quarter Sessions.

A serious defect in the scrupulous fairness which as a rule permeates British justice is the expense attending an unsuccessful appeal from the single justice or the Petty Sessions to the Quarter Sessions; for the appellant must enter into bond in a sum of £20 or more to stand the costs of the appeal if unsuccessful. This amounts to nothing less than

practically denying to the poor the right of appeal and without doubt causes much injustice.

Besides the appeal to the Quarter Sessions for a re-trial before that court, there is allowed with certain limitations an appeal from a single justice, Petty Sessions, or Quarter Sessions on a point of law to the High Court of Justice.¹

Different Functions of the Judge and the Jury.

It is well to explain at this point the difference in function of the judge and the jury. The judge's duty is to know and apply the law to the case in question. He is not to decide upon the facts. That is the prerogative in a free country of the jury of the fellow-citizens of the person on trial in a criminal case or of the parties to the controversy in a civil case. The citizen is thus protected from having his life, liberty, or property imperilled by the say-so of a government official, but rests in the security of the judgment of his peers and fellow-citizens, men who hold no public place, have no professional impulse to vindicate their official position or to enforce mere authority as distinct from justice and the public good. While it is true that the trained and practised mind of an educated judge is far better fitted to decide a matter of pure logic or intellect, it is also true that a judge almost inevitably comes to imbibe such a preconception in favour of law and the su-

¹ For the High Court of Justice, see page 176.

premacý of the state that he would in many cases be unfavourably biassed against the accused. Consequently the jury, though not so well trained or of such natural intelligence as the judge, is a safer guardian of the liberty of the citizen. The jury, if properly guarded against the admission of ignorant or corrupt men, is pretty sure to be capable of saying which of two sides has made the better showing in the mere facts of the case.

But however intelligent a jury might be, it cannot be expected to know the rules and enactments of the vast body of law which has been built up through centuries. It is therefore necessary that the judge shall state and explain to them the law bearing upon the particular case before them, in order that they may intelligently render their verdict on the facts in the light of the legal rights and obligations of all concerned.

Right to Trial by Jury. We may here summarize the part played by the jury in the criminal courts. The single justice and the Court of Petty Sessions in trying the petty cases which fall within their jurisdiction employ no jury. In the Court of Quarter Sessions the accused is always tried by jury, except on appeal from the lower court, in which case the justices judge both law and fact. We may state here also that the Court of Assize¹—the court for

¹ See page 176.

serious crimes—always employs a jury, as does also the King's Bench Division of the High Court of Justice,¹ when trying a person by original jurisdiction.

Grand Jury and Petty Jury. Since practically everyone is in a general way familiar with the trial of a case by jury, we have so far assumed that the word jury referred to a trial jury. The jury which hears a criminal case and declares the accused guilty or not guilty is called the petty jury, or trial jury. In England it consists of twelve men chosen from those who possess a certain low property qualification, namely owning or occupying land of an annual rental value of £10.² Their verdict must be unanimous.

Before any one can be put to the humiliation and expense of a trial for a serious offence, he must be indicted by the grand jury. The grand jury is drawn from citizens of a considerably higher property qualification and consists of not less than twelve nor more than twenty-three members. They examine the broad general facts of the case as brought to their attention by a private citizen, the public prosecutor, or their own investigation. If the charge is evidently frivolous they say "no true bill," and the accused is dismissed. If, however, there appears

¹ See pages 177 and 179.

² With certain other qualifications for non-landowners.

sufficient evidence to warrant a trial, they say "true bill," and the case is given to the petty jury for trial. For this at least twelve of the twenty-three members of the grand jury must agree.

The Indictment. A "true bill" is also called an indictment. The accused can be tried only for the crime specifically charged in the indictment. The purpose of the grand jury and the indictment is thus to prevent vexatious and unjust affliction to innocent persons through prosecution arising from lack of judgment or personal spite, and also to enable the accused to know exactly the nature of the charge against which he must be prepared to defend himself.

Even though the grand jury may find "no true bill," a "true bill" may later be found by another grand jury on the same accusation. But when a person is once acquitted by a petty jury, he can never be tried again for that offence, even if it should be proved that he was acquitted by false testimony or if new evidence conclusively establishing his guilt should be discovered. Though a person richly deserving punishment may at times escape in this way, it is a proper provision; for one must be able to know that he is free from the peril of trial after trial, after, perhaps, the witnesses who could establish his innocence are dead. "It is better for ten guilty men to escape rather than for one innocent person to perish."

There is no grand jury or indictment in the small cases tried without a petty jury.

Assize of the High Court of Justice. Next above the Court of Quarter Sessions stands the Court of Assize, or the Assize of the High Court of Justice. This august tribunal, with which lie the issues of life and death, of liberty or life imprisonment, and the weightier matters of the civil law, presents the most imposing aspect of English justice outside the highest courts in London. The judge's entrance to the court-house is marked with solemn ceremony. His head is covered with a great wig that adds dignity to his appearance; while administering civil justice he wears a black silk gown, and when he takes up criminal business the change is impressively announced by his being clothed in a robe of crimson. When he performs the solemn duty of passing sentence of death, he removes his wig and places upon his head a black cap worn only for this occasion.

The organization and relationships of this court are so complex that we shall explain them at this point only so far as is necessary for the purposes of this chapter.

The High Court of Justice. In London there is a body of twenty-five judges having authority over the whole country, and called "the High Court of Justice." There are three divisions of this court,

for trying different kinds of cases.¹ The one which concerns us now is the King's Bench Division of the High Court of Justice, or, for short, the King's Bench Division. This consists of sixteen judges chosen from among the eminent lawyers of the country. The judges of the King's Bench Division are the ones who are sent out from London to hold the Assizes of the High Court of Justice.²

Circuits. For holding the Assizes, England (including Wales) is divided into eight circuits, each containing several counties. One or two of the judges of the King's Bench Division of the High Court of Justice are assigned to each circuit, to visit either singly or together their circuit four times a year. In case they go together, one holds criminal while the other holds civil court. The court is held in at least one place in each county; but several of the larger counties are cut up for this purpose into two or three divisions, each of which is treated as a separate county. This system of circuit courts

¹ Any judge may sit on any kind of case, and any of the three divisions of the court may apply either common law or equity.

² **The Central Criminal Court.** Not to break the systematic description of the courts of the text, an account of the Central Criminal Court is inserted here. This court serves as a Court of Quarter Sessions for the City of London proper and as a Court of Assize for the metropolitan district. It meets monthly and is presided over by judges of the High Court of Justice or certain judges of the City of London. It sits usually in three, or if pressure of business demands, in four or even five divisions, each in effect a separate court.

presided over by royal judges sent out from London was organized in the twelfth century by Henry II and stands as one of its founder's surest titles to statesmanship. By means of it uniform laws and justice were made possible throughout the realm and England was put centuries ahead of the countries of the continent in nationality, union, and legal development.

Jurisdiction of the Court of Assize. The Assize of the High Court of Justice can try any indictable offence, *i. e.* any crime above the petty misdemeanours which are reserved for the lowest courts, or to put it more exactly, any case for the trial of which the finding of a "true bill" by the grand jury is necessary. Cases involving the death penalty or life imprisonment or difficult points of law are reserved for the Assize alone, but less serious indictment cases may be tried either in it or the Court of Quarter Sessions. As a matter of fact, the Quarter Sessions dispose of most of the latter, and the Assizes are occupied mainly with the graver cases.

Relations of Assizes to Other Courts. Though the judge who goes out to hold the Assizes is a member of the King's Bench Division of the High Court of Justice, he is not, on Assize, holding the Court of King's Bench,^{*} nor is he performing that duty under the control, supervision, or appellate jurisdiction of

^{*} There is in fact now no Court of King's Bench.

the King's Bench Division. He is, on the contrary, holding the Assize, or local meeting, of the High Court of Justice, the great national court of which the King's Bench Division is only one part. The Assize is indeed co-ordinate with the King's Bench Division,¹ and appeals lie from either of them to their common superiors, the Court of Appeal in civil cases and to the Court of Criminal Appeal in criminal cases.

Though the Assizes are superior in grade to the Courts of Petty and Quarter Sessions, yet they have no appellate jurisdiction over those courts, appeals from which go straight to London to the King's Bench Division of the High Court of Justice or the Court of Appeal or the Court of Criminal Appeal, according to the nature of the case.²

The Original and Appellate Jurisdiction of the King's Bench Division. The King's Bench Division of the High Court of Justice, though not superior in jurisdiction to the Court of Assize, is superior in learning and dignity, as it comprises all the judges who separately hold the Assizes. It is provided, therefore, that certain cases of exceptional importance may be, at the desire of the government, tried before the King's Bench Division. Such cases are comparatively few.

¹ Alexander, 118.

² The functions and relations of the Court of Appeal and the Court of Criminal Appeal are explained on pages 180-82, and 199-200.

The King's Bench Division of the High Court of Justice acts as a court of appeal for errors in law by the courts of Petty and Quarter Sessions, and as such it has extensive duties.

The Court of Criminal Appeal. In 1907, Parliament established a court for hearing appeals from the Courts of Quarter Sessions and Assize, a right which had previously existed in such a limited degree as to lead to the statement generally made that there was no right of appeal in criminal cases. The statement in that extreme form is inaccurate; for even before 1907 there was the right of appeal on account of an unmistakable error in the record, and Petty and Quarter Sessions could be restrained from committing wrong or compelled to perform a manifest duty by an order obtained from a superior court. Moreover the presiding judge in these courts could of his own will refer a point of law for decision to the higher court. All this was inadequate, however, and permitted many a wrong for which no remedy whatever existed. It was the occurrence of a peculiarly outrageous miscarriage of justice from the want of a proper system of appeals that led to the establishment of a Court of Criminal Appeal.

This court may hear appeals in any indictable offence, *i. e.* any crime above mere police court offences, which is the same as to say in any case in which there has been found a true bill by a grand

jury. Its duties are of course mainly to deal with cases of a serious nature. The Court of Criminal Appeal consists of three or more judges uneven in number chosen by the Lord Chief Justice (the head of the King's Bench Division of the High Court of Justice) from the King's Bench Division for that purpose. It hears its cases, of course, without a jury.

The appeal to this court may be on account of any one of a number of reasons, or on account of several reasons taken together. First, the convicted person may ask the court to reverse the conviction because the verdict was not sustained by the facts. Second, he may appeal on a point of law; *i. e.* he may ask to be set free because the judge in the lower court either committed or permitted some error which caused him to be convicted unjustly. Third, he may appeal to have his sentence reduced, unless its amount is fixed by law without discretion on the judge's part.¹

In no case can the Court of Criminal Appeal order a new trial. It disposes finally of the case by either confirming, reversing, reducing, or increasing the sentence of the lower court. In most cases this is eminently proper and contributes greatly to the promptness and certainty of justice—qualities so

¹ On points of law the right to appeal is absolute; on other points leave must be granted by the Court of Criminal Appeal or the court from which appeal is made.

seriously impaired in this country by undue prolongation through appeal, remanding to the lower court for re-trial, and again appeal, and so forth until years are consumed and justice dies, so to speak, of suspended animation. There arise cases, however, in which an entire re-trial before a jury is needed, and the judges of the English Court of Criminal Appeal have expressed their regret that it is not possible for them at times to order this.

No appeal can be taken from the decision of the Court of Criminal Appeal unless the Attorney-General certifies that the case involves points of exceptional public importance. In that event, appeal lies from the Court of Criminal Appeal to the House of Lords, the ancient supreme court of England.

The Lords of Appeal in Ordinary. In remote times, when laws were few and simple, the House of Lords could perform the duty of a supreme court acceptably; but now none can do so except trained lawyers. For this purpose there are four eminent lawyers appointed lords for life (*i. e.* they do not transmit their titles to their sons) to discharge this duty for the Lords. They are called Lords of Appeal in Ordinary, or law lords, and together with the Lord Chancellor and any other lords who may have held high judicial office whom they choose to invite, they constitute in effect the supreme court of Great Britain. Though any member of the House

of Lords has the legal right to attend and vote on appeals, a custom as strong as law forbids; and should any lord attempt such conduct it would promptly be made impossible in future by an appropriate statute.

Prosecution of Offenders. Prosecutions are conducted in England with less system than in other countries. The Attorney-General, or his assistant and substitute the Solicitor-General, conducts the prosecution of a few cases of national importance. There is also an official called the Director of Public Prosecutions, with several assistants, who is obliged to prosecute in all capital offences, in those of great public importance, and in a few others. As a matter of fact these amount to only a few hundred cases annually for the whole country.

The vast bulk of cases are still prosecuted, in theory, by private persons, usually those having suffered the wrong; but the expense is now borne by the county. The prosecution is conducted by a lawyer employed for the purpose, as there is no regular prosecuting attorney for ordinary cases as in the United States.²

The Power of the Judge. An English judge not only states and explains the law to the jury and sees that the whole trial is conducted legally, but also in his address, or charge, to the jury immediately

² Alexander, 127-35; Lowell, i., 133-4; Porritt, 109, 115.

before their entering into consultation, he sums up and comments upon the evidence on both sides. This practice regarding the evidence is still allowed in some American States, while in others the judge is confined to explaining and applying the law. While it allows an unfair judge a dangerous opportunity, it doubtless on the whole is of assistance to the jury in administering justice to have the services of a trained lawyer who is interested in neither side call to their attention the essential and unessential, the important and the negligible features of the evidence, and thus concentrate their minds upon the points in the proper consideration of which a correct decision rests.

Promptness of English Courts. Justice in England is swift and sure. While there is no hurry, there is also no useless delay. It is unusual for more than three months, says Porritt, to elapse between the arrest of a guilty murderer and his execution. "British justice" is reputed to be as scrupulously fair as it is relentlessly prompt, and this reputation is the better deserved since the establishment of the Court of Criminal Appeal; for not only do the number of cases reversed by this court prove the imperative need of such a court, but its presence has exercised a wholesome effect in making the courts below more careful.²

² Alexander, 124.

Not only is British justice proverbially fair and prompt, but it is little coloured by passion and sentimentality, either in the trial or the pardon of offenders. When to the pleas for the life of Sir Roger Casement when convicted of treason on the ground that his execution would affect public sentiment unfavourably, particularly in America, the Ministry replied that in England they neither execute innocent men nor pardon guilty ones for reasons of policy, but in accordance with the demands of justice, they pointed out the immovable corner-stone on which the temple of justice must be squarely built; but to many Americans it was an utterance very hard to comprehend.

The rarity of crimes of violence in England is of course largely due to the settled and mature stage of its society; but it cannot be doubted that it is also largely due to the certainty of punishment. The vast majority of homicides are hanged inside of a year. England has the lowest average of murders of any country in the world. Men will not kill each other if speedy hanging is a practical certainty, any more than they will thrust their hands into a fire knowing it will surely burn them.

Pardon. The right of pardon lies nominally with the Crown, but actually with the Secretary of State for Home Affairs. It is exercised sparingly.

Summary. In closing this chapter, we may review

the various grades of courts in the reverse order from that in which they have been considered. At the top is the House of Lords (really the Lord Chancellor and the four Lords of Appeal in Ordinary); immediately below is the Court of Criminal Appeal, composed of an odd number of judges of the High Court of Justice; next are two courts which are of the same grade but different dignity, the King's Bench Division of the High Court of Justice, composed of sixteen judges, and the Assizes of the High Court of Justice held in each county by one of these judges. Appeal from either of these may be made to the Court of Criminal Appeal, and the former also decides appeals on points of law from the Quarter Sessions and Petty Sessions. The Quarter Sessions try cases on appeal from the Petty Sessions and also try in the first instance any crimes except the most serious, which are reserved for the Assizes. At the bottom of the system are the two justices without jury exercising summary jurisdiction in petty cases and the single justice committing to a higher court, granting bail, or acting as a sort of police court in trivial offences.

We shall now take up the courts for the trial of civil cases.

CHAPTER XVII

THE CIVIL COURTS

The Nature of Civil Business. Civil law is much more complicated and difficult than criminal law; for the latter is concerned more directly with those fundamental principles of right and wrong that appeal to the common conscience and intelligence of mankind, whereas the former has to do with the innumerable questions and issues arising from the endless relationships of men in society over their property, personal rights, and obligations. Any right which one person claims and another disputes, or any injury which one person does another, may become the subject matter of a civil suit. If one person harms another by repeating a slanderous rumour, he unquestionably commits a wrong and injury, and for this the injured party may secure money damages in the civil court. Even a crime, such as murder, may form the basis for a civil suit; for the civil court will award damages to the heirs of the murdered man if they bring suit, since an

injury has been done to them. In trying the case in the civil court for the purpose of awarding damages to the injured person, or in the criminal court for meting out such punishment as justice and public safety demand, the civil and criminal courts act entirely independently of each other. Thus a person may be acquitted in a criminal prosecution for assaulting another, but may nevertheless be compelled by the civil court to pay heavy damages to the person assaulted.

Common Law. In early times there was little law-making by King or Parliament and society was in such a slowly developing state that few new laws were needed. Under such circumstances, the customs of a people come to be regarded as binding and in time acquire the force of law. It is necessary, however, that some authority shall interpret and apply these customs. This was the duty of the courts. Thus through the centuries the English courts gradually built up a set of rules governing most of the circumstances which are likely to arise in the relations of men in a simple society. This body of customs having the sanction of the courts is known as common law. Common law is generally defined to be that which hath been law and custom since the memory of man runneth not to the contrary. All the ordinary crimes violating the fundamental rights of our fellow-men, such as murder, assault

and battery, robbery, house burning, were thus recognized as wrong and were punished by the courts long before any Parliament undertook to pass on the subject. These are known as common law crimes. Similarly the fundamental rights of life, liberty, and property were early recognized and protected by the courts, such as the right of the father to discipline his children and his obligation to furnish them with the necessities of life.

The law governing all these matters has been expanded and applied to new conditions by the courts through the centuries of the development of English institutions, until it has become an immense body of law which requires years of study to master. The courts which enforce it are known as *common law courts*.

Statute Law. As time went on, the right of the judges to declare what should be binding as custom and law was limited by the determination of the representatives of the people in Parliament to make law for themselves. Acts passed by Parliament (or any such legislative body) are known as statute law, because it originated in some definite statute. The common law courts, however, enforce statute law just as they do common law.

Equity. It is impossible for men to foresee every circumstance that might arise and the peculiarities of every individual case. Therefore many cases

arose in which the law did not properly apply, or if it should be enforced, would work manifest injustice, such as was not intended by its makers. In such cases it was customary in early times in England for the person aggrieved to apply to the King, as no other remedy existed, for such equitable (that is just) relief as the King's sense of justice might suggest. The King referred such cases to the high official called the Chancellor, who was considered the "keeper of the King's conscience" and was in those days practically always a churchman, with directions to afford such relief as the case demanded. The necessity for this extraordinary power arose not so much out of conflict with the provisions of the common law, but rather because of the fact that the common law had not provided for such cases and hence afforded no remedy; though in some cases the Chancellor did actually overrule the common law in his decisions.

The court which the Chancellor thus came to hold was called the *Chancery Court*, and the body of principles and rules which he built up came to be called *equity*, in distinction from law; though in the general meaning of law, equity is a part of the law of the land.

There thus grew up two sets of courts, law courts and equity courts, each with its own judges, its own rules, and its own methods.

No Jury in Equity Cases. Bearing in mind the difference in the functions of the judge and the jury as explained on page 172, we can readily understand the different practice in the law courts and the equity courts in regard to the jury. Since the settlement of disputed matters of fact is one of the chief duties of the law court, it always employs a jury,¹ and the judge simply guides and assists the jury by instructing them in the law in the case before them and in general sees that all the proceedings are in accordance with law. In other words, the jury ascertains the facts, and the judge applies the law to the facts so determined.

Since in cases in equity, however, the chief task is to determine what is essentially just in a certain set of circumstances, and the determination of the mere matters of fact is not so prominent, the presence of a jury is not only unnecessary, but would render impossible the attainment of the object in view, namely, the determination of the right and just decision by a trained mind in a difficult and complicated set of circumstances. Hence the rule in law cases is to have a jury; in equity cases to have no jury, but to leave the whole case to the Chancellor.²

¹ Except in civil cases as explained on page 195.

² Since even in an equity case, however, it is often necessary to settle disputes between the parties as to the facts themselves, the Chancellor may refer the determination of the facts to a jury, while reserving entirely to himself the determination of what shall be done when the facts are so established.

Steps towards Uniting Law and Equity. It is now provided in England that either a law judge or a chancery judge may apply either law or equity in any case that comes before him. This seems a step in the direction of removing the artificial separation of cases, practice, methods, and courts into two divisions; but as a matter of fact little progress has been made in that direction. The law judge or the Chancellor does indeed apply either law or equity as is necessary; for frequently a case is one partly in law and partly in equity; but it is a fact that the cases are still divided sharply between the two sets of courts according as they fall principally under law or equity.

In most American States the separate equity courts have been abolished, and the same court applies law or equity in the trial of the case as occasion requires. But each case is still regarded as an equity case or a law case as its circumstances dictate, and the functions of the judge and jury respectively are as described above.

It is also interesting to note that equity has lost most of its early flexibility and has come to be nearly as rigid as the "law," whose rigidity it was designed to remedy. The Chancellor's opinion as to what is equity should not of course be any individual's mere notion. If the decrees of the Chancellor were to be of practical value in guiding men in their

difficulties they must be consistent in themselves and permanent in effect. An equity case once decided became a precedent for similar cases, until a long line of decisions by his predecessors left the Chancellor deprived of the option of granting justice on the untrammelled and unsupported dictates of his own reason and conscience almost as completely as was the judge, bound by acts of Parliament and the rules of the common law.

The County Courts. Having now explained the meaning of civil cases and pointed out the two varieties, law and equity, we shall proceed to describe the courts in which the civil law is administered, beginning, as in the previous chapter, with the lowest courts and passing upwards to the highest.

For the settlement of cases of minor importance there exist a large number of courts called County Courts, though they have no connection with county lines, but simply retain the name apparently for the sake of tradition. For this purpose England is divided into more than five hundred districts, in each of which there is a County Court which meets at least once a month.¹ The districts are grouped into about fifty circuits, and for each circuit there is a judge, who must be a lawyer of many years' training. These circuits have no connection with those

¹ Porritt, 116.

which have been described in connection with the Assizes.

Jurisdiction of the County Courts. The business of the County Courts is purely civil, as they have no criminal jurisdiction whatever. Their purpose is to supply prompt and cheap settlement of the vast mass of controversies involving small amounts which arise in the ordinary business of commerce and the relations of men in society. The procedure is much more simple than in the higher courts, so much so that many persons conduct their own cases. They administer both law and equity, and can try any case in the former in which the amount involved does not exceed £100 and in the latter in which it does not exceed £500. Certain cases, however, which involve unusual difficulties of law are withheld from them, no matter how small the amount.

In cases involving over £20, or in smaller cases with the consent of the judges, appeal may be made from the County Court to the High Court of Justice in London.¹ The appeal is generally heard by the King's Bench Division of the High Court.²

¹ Lowell, ii., 452, n. 3.

² For the divisions of the High Court of Justice, see pp. 176-77. Admiralty cases go by appeal to the Admiralty Division. Though the Chancery Division does not formally receive "appeals" except from its own subordinates, the masters and conveyancing counsel, it sometimes reviews or restrains the County Courts in equity matters. For brief statement, see *Britannica*, ii., 211-12.

Juries in Civil Cases. While the jury is always used in criminal cases above the courts of summary jurisdiction,¹ this is not true in civil cases. Both in the Assizes and in the inferior courts, either party in a lawsuit has the right to demand a jury; but it is probably more common to agree to do away with the jury and submit both law and fact to the decision of the judge. In the County Courts the jury numbers eight; in the higher courts twelve. In any civil case a verdict may, by the consent of both sides, be rendered by a majority of the jury, though in criminal cases a unanimous verdict is always required.

There are three classes of juries in England for civil cases. First are ordinary juries, which are drawn from citizens owning land worth an annual rental of £10 a year, with certain other qualifications for non-landowners—the same qualifications as required for jurors in criminal cases. Second, there are special juries drawn from bankers, merchants, or men occupying land or buildings of considerably greater value; and third, there are extra special juries drawn from the list of the special jurors of a considerably wider area than is the case with other juries. The ordinary juror receives only a shilling a day; the special juror receives in addition a lump sum of one guinea for each case. The special jury can be demanded by

¹ *I. e.* courts trying small cases without jury. See page 166.

either party to a suit. The one making the demand pays the extra expense. They are growing in popularity, as their judgments are more relied upon than are those of the ordinary jury.¹ This presents a striking contrast with the tendency in the United States, where instead of putting the qualification for jurors higher than that for voters, and then in addition providing for the employment of men of unusual intelligence and training for the more difficult cases, the law too often exempts large classes of the community whose daily vocations and general education and intelligence best fit them for the difficult task of weighing evidence and keeping themselves free from the appeals of prejudice and passion.

The justification for the special jury in civil cases lies in the fact that such questions are often more difficult than criminal trials, and that they sometimes involve facts of commerce or land tenure of such a technical nature as to render long familiarity with these matters very needful in the juror. The guilt or innocence of a man being tried for his life on the charge of killing his neighbour is of much more importance, but is not nearly so difficult as to ascertain the right to the property involved in a disputed bill of exchange or a deed transferring an entailed estate.

¹ Lowell, ii., 459-60; Porritt, 108; *Britannica*, xv., 590-92.

The Assizes. We recall from the last chapter that the Court of Assize consists of a judge or judges of the High Court of Justice in London sent down on circuit to hold court in the various counties of the country. The Assizes have both criminal and civil jurisdiction. In the latter they can try any case in law or equity; though the more important cases in equity are carried in the first instance directly to the Chancery Division of the High Court of Justice in London. The Assizes are held in each county at least four times a year for criminal business and generally twice a year for civil business.

The High Court of Justice. It is now necessary to explain more fully the nature and organization of the High Court of Justice, to which frequent allusion has been made. This court has authority over all England and Wales, and is the successor of the great national courts of the kings of the Middle Ages by means of which law was made national and uniform and England given such a start beyond the nations of the continent in the orderly administration of justice.¹ It is organized in three divisions: the Chancery Division, with seven judges, of which the Lord Chancellor is President; the King's Bench Division, with sixteen judges, of which the Lord Chief Justice is President; and the Probate, Divorce, and Admiralty Division, with

¹ See page 177, above.

two judges, one of whom is designated as President of that Division.

The duties of the Chancery Division are to hear cases in equity.¹ These may be heard by masters, conveyancing counsel, County Courts, or the Assizes, or may be carried to the Chancery Division in London in the first instance. The Chancery Division sometimes interferes to correct a County Court, but regularly hears appeals only from its equity officers, the masters and conveyancing counsel.²

The King's Bench Division will be recalled as that Division of the High Court of Justice whose judges are sent on circuit to hold the Assizes. The King's Bench Division has original jurisdiction in certain criminal cases of unusual importance.³ Its other duties are to hear appeals on errors in law from the Courts of Petty and Quarter Sessions.⁴ It hears such appeals in civil matters also from the County Courts except in a few classes of cases.

The Probate, Divorce, and Admiralty Division hears in the first instance all divorce cases and hears on appeal cases from the lower courts having to do with wills (Probate) and maritime law (Admiralty).

It is thus plain that though the seven judges of

¹ See above, pages 189-90.

² Jenks's *Short History of English Law*, 362.

³ See above, page 179.

⁴ See pages 166-9 above.

the Chancery Division, the sixteen of the King's Bench Division, and the two of the Probate, Divorce, and Admiralty Division are called as a whole the High Court of Justice, there is really no such court; for they never meet as a whole and have no duties as a whole. From their number are chosen the judges who go on circuit to hold "a court of the said High Court," called the Assize of the High Court of Justice; and so on with all the courts which its judges hold. Such courts are made up of one or more of the judges chosen from the High Court to hold some special court, called the Chancery Division, or some other, of the High Court.

Though the High Court of Justice is organized in three Divisions each with its own group of judges, yet a judge of one Division may sit in any other Division. This has the advantage of flexibility; but more important than this is the fact that any Division of the court may administer either law or equity, as explained on page 192.

The Court of Appeal. This eminent tribunal consists of five Lords Justices of Appeal appointed specifically to this office and of the following *ex-officio* members: the Lord Chancellor and any former Lord Chancellor whom he may invite, the Lord Chief Justice,¹

¹ The Lord Chief Justice of the King's Bench Division of the High Court of Justice (see page 197), commonly spoken of as The Lord Chief Justice of England or the Chief Justice.

the Master of the Rolls,¹ and the President of the Probate, Divorce, and Admiralty Division.² Stated more briefly, the Court of Appeal consists of its own six justices (for the Master of the Rolls belongs only to it) and the Presidents of the three Divisions of the High Court of Justice *ex-officio*. The six regular judges work in two sections and so virtually constitute two courts. The absence of a member or the necessity of organizing a third section or of securing wider judgment may be met by calling in *ex-officio* members.

The jurisdiction of the Court of Appeal is purely civil, but in this it is quite far reaching. Except in prize cases, it hears appeals from any Division of the High Court of Justice and from certain courts below that tribunal. We may say briefly, without any attempt at outlining the complex rules governing the matter, that its jurisdiction extends to appeals arising in England and Wales in cases of equity, to appeals on errors in law, to certain appeals from County Courts,³ and to appeals on questions of law from the Railway and Canal Commission.⁴

The Supreme Court of Judicature. To conclude our description of this very complicated system, the

¹ An ancient and honourable judge; until 1881 a member of the Chancery Court, but since that time "a member of the Court of Appeal only."

² See page 197.

³ Cases under the Agricultural Holdings Acts and the Workmen's Compensation Acts.

⁴ For appeals from Scotland, Ireland, the colonies, and church courts, see Chapter XVIII.

High Court of Justice and the Court of Appeal taken together are called the Supreme Court of Judicature. This, however, is really not a court, but only a name for a collection of courts, each of which attends separately to its own business. No such body as the Supreme Court of Judicature ever meets, deliberates, tries cases, or renders decisions.

The Supreme Court of Judicature was created before the Court of Criminal Appeal,¹ and hence the latter was not included as a part of the former. It is virtually a part of it, however, as its judges are chosen from it, and as it is the counterpart in criminal jurisdiction of the Court of Appeal in civil business.

The House of Lords. The function of the House of Lords as the supreme and final court of appeal in England has already been explained on page 182. In civil cases there is not the necessity of obtaining the Attorney-General's or any one else's consent for an appeal from the Court of Appeals to the Lords. A civil suit not being a matter concerning the government, no government official has any part in it save to sit as judge or to perform such duties as sheriff or clerk as the judge may direct.

Reference to the table of courts following page 372 will serve as a review of the last two chapters and help to make clearer a quite difficult subject.

¹ See page 180.

CHAPTER XVIII

MISCELLANEOUS FACTS ABOUT THE COURTS

The Judicial Committee of the Privy Council. First among the features of the English judicial system, omitted in the two preceding chapters in order to give a clear account of the courts, is the Judicial Committee of the Privy Council. The Privy Council, as explained on page 124, is now merely an honorary body, taking no part in the government. Yet certain important officials or groups of officials are nominally committees of the Privy Council. Such is the case in the present instance. A half dozen or more persons who bear the title of Privy Councillor and have the requisite qualifications of profound legal learning are designated as the Judicial Committee of the Privy Council. These are the Lord Chancellor, the four Lords of Appeal in Ordinary, several judges who have held high judicial positions in India or some self-governing colony, and, if invited, several other judges of high standing.

Powers of the Judicial Committee. The Judicial Committee of the Privy Council is the highest court of appeal in all cases from the church courts and from the highest courts of the colonies, and, after the Home Rule Act goes into force, from the highest court of Ireland.¹ The strange fact that this body of laymen, any member of whom might be a member of some other than the established church or of no church at all, should have the last word as to what is law in religious matters, is an incident of the union of church and state.

The Central Criminal Court. In describing the criminal courts we passed over the fact that there is a different arrangement in London from that in the rest of the country. There a judge of the High Court of Justice and several judges for the city hold the Central Criminal Court once a month. They sit in four or five divisions, each being in effect a complete court. The court discharges for the metropolis the functions of both the Quarter Sessions and the Assizes. It tries a large proportion of the criminal business of the entire kingdom, due to the vast population and peculiar problems of the capital.

Appointment and Tenure of Judges. The Lord Chancellor appoints all judges from the highest to

¹ Previous to that, the House of Lords was the supreme court of appeal from Ireland as from Scotland.

the lowest, including justices of the peace, with four exceptions: he himself and the Lord Chief Justice (the head of the King's Bench Division of the High Court of Justice), the judges of the Court of Appeal, and the four Lords of Appeal in Ordinary are appointed by the Prime Minister.* The justices of the peace and the judges of the County Court are removable on the recommendation of the Lord Chancellor; but removal occurs only for improper conduct, and never for partisan or personal reasons. The judges of higher grade are removable by impeachment, or they may be removed by the Crown on petition of a mere majority vote of the two houses of Parliament.

The salaries of all English judges are much higher than those in the United States. The justices of the peace, however, receive no pay.

Non-Judicial Duties of the Justices of the Peace.

The justices of the peace were originally a superior grade of police officer rather than judges, and with time they came to be "the state's man of all work"; for on them were placed the increasing tasks of the care of the poor and the administration of local government in general. They still retain a few of these powers, one of the chief of which is to call out

* It is of course understood that they are all appointed nominally by the King; the actual selecting of the men is, however, as stated in the text.

the troops in case of riot. They have the authority to read the riot act, and after waiting a reasonable time for the rioters to disperse, to order the troops to fire.

Barristers and Solicitors. A distinction exists between the members of the bar in England to which the practice in America is a complete stranger. This is the division of lawyers into two classes with different privileges and to a great extent with different tasks. The lower rank of attorneys are called solicitors. They are admitted to practice after an examination by an association of solicitors authorized by Parliament to conduct examinations and maintain the standards of the profession. A solicitor cannot practice in any court above the grade of the County Court and the Court of Quarter Sessions. If the case is of a character which requires argument in a higher court, the solicitor collects the evidence, prepares all the papers, and in general gets the case in shape for trial. He then employs a lawyer known as a barrister to conduct the case before the court.

The barrister is admitted to the bar on examination by one of the four ancient associations in London known as the Inns of Court. He can practice in courts of any grade and may render legal service of any kind; but he must not be employed directly by the client, or person interested in the case. The client employs a solicitor and has communication

only with his solicitor. If a barrister is required or desired, the solicitor employs him, though of course the client pays. While solicitors are found all over the country, the barristers generally reside in London and go out to the Assizes with the judges of the High Court on circuit; but a few barristers have their residence in the larger cities outside London.

While barristers confine themselves strictly to the practice of law, the solicitors perform many services for their clients of a business rather than a legal nature. It is thought by some that this division of the legal profession into two classes, one of which is employed only by another class of the profession itself, makes for the dignity and purity of practice and for the development of law as a science to a higher degree than does the American system in which the members of the bar observe no such distinction.¹

Scotland and Ireland. Before the union of Scotland and England, the former was in close contact with France and hence its law came to be much influenced by the Roman law. The two systems of courts and practice are still kept separate, although appeal lies from the highest court in Scotland to the House of Lords in London.

In Ireland certain differences exist in the organization of the courts; but the system of law and practice is essentially the same as in England. As in Scot-

¹ Lowell, ii., 468-69.

Miscellaneous Facts about Courts 207

land, appeal lies from the highest court in Ireland to the House of Lords in London; but after the Home Rule Act goes into effect, final appeal from the Irish courts will be to the Judicial Committee of the Privy Council.¹

¹ See page 202.

PART IV. POLITICS AND ELECTIONS

CHAPTER XIX

PARTY ORGANIZATIONS

Party Organizations less Powerful in England than in the United States. Though the United Kingdom is covered with party clubs and associations, the organizations are not so systematic or important as in the United States. The principal reasons for the greater power and more thorough system of the party organization in our country seem to be, first, the fact that our elections come at regular stated intervals, thus making it easier to prepare and maintain a vast political machine to be wheeled into action at the appointed time; second, the fact that the election of the President has called for a national nominating convention resting upon a whole series of lesser conventions; third, the American custom of distributing thousands of offices, and in many States and cities lucrative public contracts as well, in reward for political support. ~~We do not assert the absence of all~~

these causes of strong party organization in England;
we only point out their greater frequency and power
in the United States.

Local Party Organizations. In every town or city in England there is likely to be found an Association of the members of each of the great parties, Conservative and Liberal. They usually comprise only a small proportion of the voters in the locality, but they form a serviceable nucleus for agitation. These local Associations send delegates in proportion to the population of the community to the party Association for the whole parliamentary election district.¹

The District Association and the District Executive Committee. In the district Association we have a more important wheel in the machine of party management. This wheel does not move itself, however, but is turned by the executive committee for the district. That is to say, the most important action is taken on the suggestion and leadership of the executive committee, and the district Association is mainly used for confirming their action and rallying party enthusiasm. Those familiar with party manage-

¹ The English speak of the area electing a member of Parliament as a parliamentary division, but on account of the word division being used in the United States in connection with parliamentary bodies only to indicate a certain practice in voting (see page 77), the word district is here used to indicate the portion of the country electing a member.

ment in the United States know that, although not so openly professed, much the same is true in this country. It is impossible for a large convention assembled for a day or so only at long intervals, and composed of men previously unacquainted, to act with much real self-direction or to do otherwise than follow the lead of prominent party men who are entrusted with the conduct of the campaign.

Nominating the Parliamentary Candidate. The district Association formally nominates the party's candidate in that district for Parliament; but as a matter of fact the real nominating body is the district executive committee. If the executive committee is satisfied with a man who intimates his ambition, it has him put forth as the candidate. If they wish to see an exhibition of his powers, a public meeting may be arranged at which he addresses the voters. In case of several aspirants, the executive committee may suggest two or three names to the meeting of the Association; but it is expected that the committee will give the party the benefit of their care and judgment at least to the extent of eliminating all but the two or three most desirable men.

The District Agent. Another feature of the organization of the parliamentary election district must be noticed—the district Agent of the party. This useful party servant is peculiar to English politics. He holds a recognized salaried position and gives in some

instances his whole time to serving the interests of the party. The law requires every candidate for Parliament to have a responsible election Agent, in order that illegitimate practices may be prevented, or at least may be more definitely fixed upon some person who may be held to account. It is customary for the candidate to choose for this purpose the party district Agent.

The National Convention. Above the district Association is the national convention, composed of representatives in rough proportion to population from the various district Associations. That of the Conservatives is called the Conservative National Union; that of the Liberals, the National Liberal Federation. As there is no duty of nominating a President or Prime Minister or really framing a party platform, these gatherings are really little more than organizations for developing party enthusiasm, keeping the voters in line, and winning elections. They meet annually, rotating year after year among the large cities of the country, and are addressed by the most prominent party leaders.

Though the national convention adopts a formal declaration of party principles, its action in this regard is merely the perfunctory registering of approval to a set of declarations on which the party is well agreed and rarely gives rise to serious controversy. The platform adopted by the national con-

vention even in America has often been found quite impracticable when later brought to the test in Congress; and in England the very nature of parliamentary government under the leadership of a responsible Ministry makes the authoritative statement of a platform almost impossible for any other collection of men than the Cabinet. If the Ministry are to be responsible for carrying out a program and liable to immediate expulsion from office in case of failure, they must be allowed the shaping of it, subject, of course, to dismissal if in this way they fail to express the aspirations of the party.

The National Executive Committee. Any real deliberation in connection with the national conventions of the two parties is in their executive committees, and these are strongly under the influence of their party chiefs. Any other plan under the English system of politics would lead to disorganization in the party and weakness in the government.

The National Central Office. Just as the party has in each parliamentary election district the party Agent, so each has for the whole country a Central Office in charge of a skilful party manager. It is the headquarters for political warfare, and is under the immediate control of the national leaders of the party. It advises local party leaders, sends out immense quantities of literature, and even gives money aid in poor districts.

Raising Funds for the Party. A word may be said regarding the sources from which party funds are drawn. As there is no protective tariff legislation and little agitation on "trusts" and railroads, the ever-present resource of squeezing the corporations or their officers and stockholders on the implied promise of immunity from unwelcome legislation hardly exists. The Associations, local and national, have a system of honorary vice-presidents, life memberships, etc., with which they appeal to the vanity or patriotism of their members and so draw a considerable revenue from the well-to-do. It is a sad, but generally recognized, fact that another fruitful source of money sometimes employed is the virtual sale of titles of honour, in some cases even peerages, in return for long-continued generous contributions to the party purse. Of course no word is hinted of a bargain; but doubtless if the honours did not come, neither would the money. The party leaders protest that they never recommend for honours any man who does not fully deserve the recognition for some personal distinction or public service. But after all is said, it remains one of the ugliest features of the flunkeyism, title-worship, and influence of mere money in English social and political life.

Influence of Women in Politics. Though women cannot vote in parliamentary elections, their influence in politics is considerable. Many ladies of

wealth and title take an active and intelligent interest in party success and public measures, and by the great value of their friendship and social influence are a power in swaying to their views members of Parliament who have social ambitions, or whose wives or daughters have such. It is hard for a social "climber" to vote against the charming (though none the less threatening) urgency of a brilliant social leader whose invitations give prestige throughout the kingdom.

The women of the Conservative party are organized in the Primrose League, which appeals with great ingenuity to the reverence for rank and the pride in being associated with nobility that is such a common human trait. Its members include the highest nobles and their wives and all social classes, down to day labourers. The more prominent female members are "Dames," the men "Knights," while the officers bear high-sounding titles drawn from mediæval chivalry. The women are particularly active workers, and the organization is one which its enemies, the Liberals, hate and fear.

The women on the Liberal side have organized in opposition, but hardly with the success of the Conservatives. Still, on both sides women make splendid political workers and can frequently win votes where men would be repelled.

Contrast between Liberals and Conservatives.

We may notice briefly the differences between the Conservative and Liberal parties and the classes of which they are composed. In a vague general way the Conservatives may be said to correspond to the Republican party in the United States¹ and the Liberal to the Democratic. The landed and aristocratic classes are overwhelmingly Conservative, just as most of the wealthy classes in the United States are Republicans. The working classes in England are mainly Liberal, and the professional and small business men are divided between the two parties. The Episcopalians generally are Conservatives and the members of the other churches mostly Liberals. The policies of the Liberals thus naturally include more measures which would appeal to the masses of the people; but the Conservatives bid hard for popular support and sometimes even go beyond the offers of their rivals. Consequently some of the great measures of reform have been enacted by one party and some by the other, though the initiative in such movements usually lies with the Liberals.

Divisions along class lines have become more marked of late years. As has been strikingly said, there used to be Conservative peers and Conservative cabmen, but now nearly all peers are Conservatives and nearly all cabmen Liberals. The new alignment

¹ Or more correctly in the North. As there is only one real party in the South, these remarks have no application to that section.

is due to the masses' seeking to assert their interests through the agency of political organization and government activity and the natural rallying of most members of the privileged and wealthy classes in mutual determination to retain the advantages which they possess. Whether this bodes ill or well for the future is a very large and complicated question in which the interests and prejudices of the individual are inextricably mingled with considerations of the general welfare. Of one thing we may be sure: either people are very generally and peculiarly wrongheaded, or there is something wrong in the social conditions that produce such an alignment.

CHAPTER XX

ELECTIONS TO PARLIAMENT

Selecting the Candidate. As remarked in the last chapter, the real selection of the parliamentary candidate is in the hands of the executive committee of the party Association of the district, or perhaps of a small special committee appointed for the purpose. A few districts elect two members, but the great bulk of them choose only one.

The party in power regularly renominates the sitting member and the other party the man who last represented them, unless there is some special reason to the contrary, such as neglect of duty or voting against party measures. This is one of the many manifestations of the conservative habits of the English and their idea of a man's having a sort of vested right in any position which he has held for a long time. So generally accepted is this custom that many districts have "permanent candidates," who it is conceded shall represent their party at the next election. Hence the temptation is strong for

these men to spend money constantly on objects likely to win popularity, such as relieving the poor, contributing to local causes, etc., instead of practising these means of vote-winning extensively only during the weeks comprising the campaign.

"Nursing" a Constituency. This is called "nursing" a constituency. It constitutes one of the ugliest features of English politics. Constituencies, particularly if they are poor, like to be "nursed," and the candidate often does not hesitate on the eve of election to remind the recipients of his charity of their obligation to remember him in return. The consequence is a decided tendency to flunkeyism, mild general corruption, and the deterioration of manly independence. The preference for rich representatives is doubtless as much due to this seductive influence as to the respect for rank in itself.

The pervading influence of money and social prestige in England makes the son of a nobleman, if possessed of capable and amiable character, always a strong candidate. The labouring classes themselves generally prefer such a representative, and indeed it is said that a workingman of political ambitions is likely to find his greatest difficulty in winning over the opposition in his own class.

Relative Democracy of the English and American Systems. Facts like these should be kept in mind in considering the extent to which the English govern-

ment is genuinely democratic. The method of legislation, the holding of the government to absolute and immediate responsibility through Parliament, and the fact of the Ministry's being subject to prompt dismissal by the voters, with the consequent keeping of both executive and legislature in full accord with the people, would appear the most perfect means of making the rulers responsive to the will of the majority that can be found in any national government, with the possible exception of Switzerland with its initiative and referendum. But against this must be weighed the powerful and subtle influence of money and class distinction. Even if the election expenses were reduced, it is a question whether, with the small salary of £400, any but rich men could as a rule afford to stand as candidates for a body whose members must take their seats immediately after election without several months' notice, as in the United States, to adjust their business affairs, and are liable at any moment to lose their places without having time to plan private means of earning a livelihood. While the American system of having elections at stated periods and allowing several months, generally over a year, to elapse between the election and the seating of the new members furnishes no such effective means of putting the will of the people promptly into effect, it makes it much easier for the man of moderate means to seek the

position. The American plan is more democratic in the personnel of candidates; the English, in the execution of the immediate popular will.

Election Expenses. The candidate bears not only the expenses of his campaign, but also the expenses of holding the election. Though so contrary to the principles of democracy as to be much condemned even in England, virtually the same practice exists in some American States by assessing the candidates a large entrance fee for the purpose of paying the expenses of the party primaries. It is to be doubted whether the well-to-do men in both countries who are so often candidates would desire to see this bar against poorer competitors removed.

Comparative Purity of English Politics. A few generations ago English politics were shamefully corrupt, so much so that bribery offices were openly kept for buying members of Parliament, and public criers sometimes went through the streets after the election notifying all the voters for such and such a candidate to go to a certain place for their pay. The steady improvement in public sentiment has now made English politics the least tainted by the grosser forms of corruption of those of any large democratic country in the world.

Corrupt Practices Act. The law rigidly prescribes the amount a candidate may spend. More important than this, however, it also requires him to appoint

an election Agent to conduct his campaign, for whose acts the candidate and the Agent himself are both responsible. The things which may be done are named and also those which may not be done. It is a punishable offence for any one to promise or seek to secure any position or employment for a person in return for votes, to treat to drinks, food, etc., or to withdraw patronage from a tradesman on account of his vote. Any illegal act by the Agent or candidate, or by any one else with the candidate's knowledge and consent, makes his election invalid and renders him for ever incapable of sitting in Parliament for that district. Any corrupt act by the Agent without the candidate's knowledge makes his election void and renders him incapable of sitting for that district for seven years. Moreover, if corruption or intimidation be very general without any misconduct on the part of the candidate or his Agent, the election may be declared void and a new one ordered. The guilty persons are also subject to fine and imprisonment. The law against corruption is enforced by a special court.¹

These excellent laws have greatly reduced corruption in elections; but there is still some which can be eliminated only by the further purification of public opinion.

Election by Plurality. The candidate is successful

¹ Lowell, i., 223-34.

who receives more votes than any other candidate (a plurality, as it is called), and is not obliged to receive a majority, *i. e.* more than half the votes cast for all candidates, which is the same as to say more votes for him than all the other candidates together receive. This is the law of elections generally in the United States, although in party primaries the rule sometimes requires an absolute majority to win the party nomination. Although it might theoretically be more democratic to require a majority, the practical results are such as to make it doubtful which system would be better in the long run.

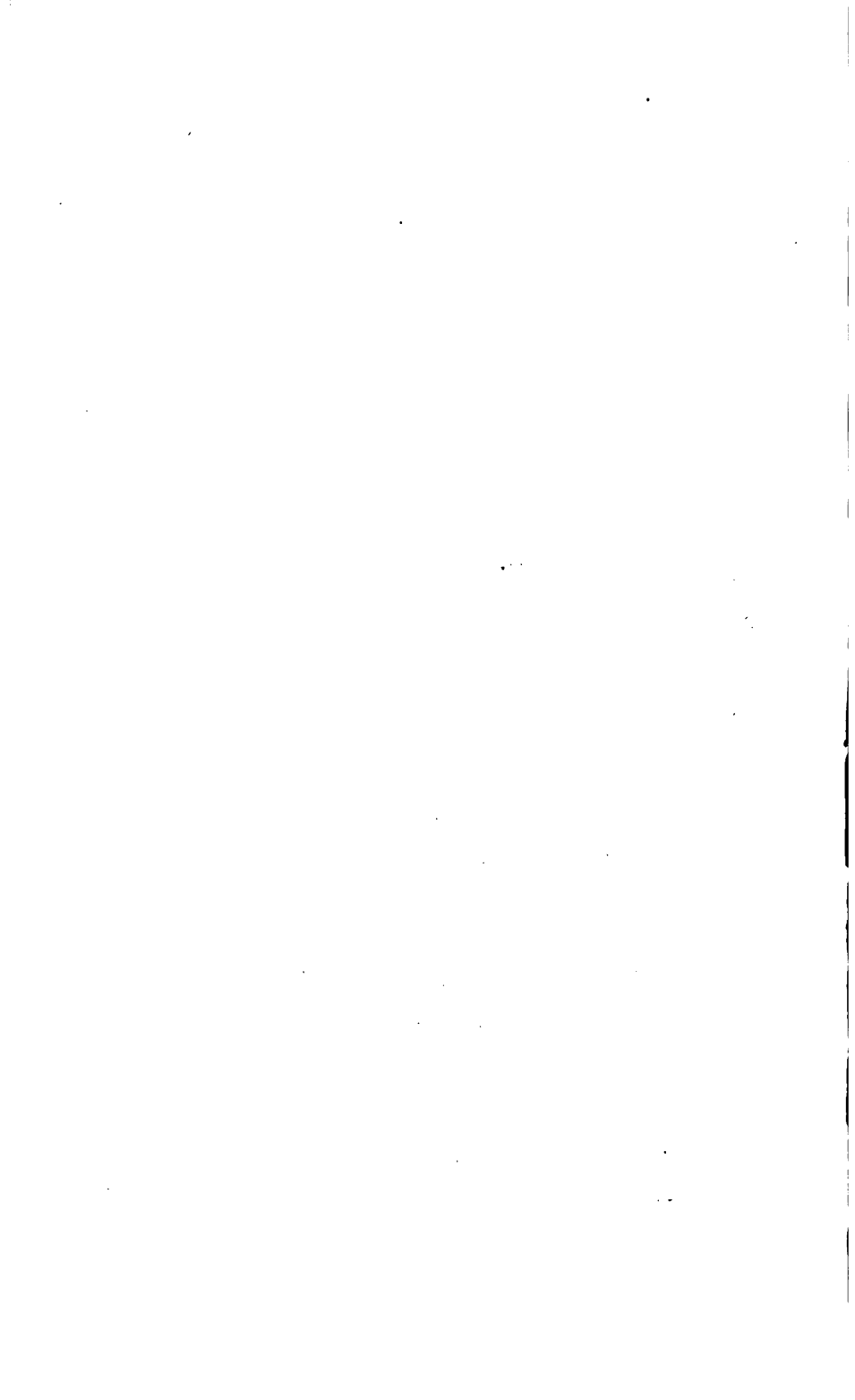
It is the rule in England, both in elections for Parliament and in those for members of local bodies, that if there is only one candidate, he is declared elected without the expense and trouble of taking a vote.

Relations of the Member to his District. The member of Parliament is supposed to represent the entire Empire, and the idea of his being sent to get whatever special advantages he can for his district, unfortunately so strong in the United States, is almost non-existent. The smallness of the country, the absence of the spoils system of distributing appointments, the great importance of sending a man who will support the Ministry loyally, and the advantage of having a rich and generous candidate, all help to account for the absence of any decided pre-

ference for having a member live in the district from which he is elected. Hence about half the members of the House of Commons do not live in their districts. The member, however, keeps in close touch with his constituents and is sometimes induced even to resign by their dissatisfaction expressed through the district party organization. A good custom is that of the member's once a year making an extended speech to the voters, giving them a full account of the principal matters of public interest.

The Morals of Free Institutions. In leaving the subject of elections, ministerial responsibility, customs of the constitution, the honourable and uncom-pelled observance of conventions and understandings, and the whole machinery of parliamentary self-government, it is with the conviction that such a system has a profound influence over a government's conduct even in foreign relations and war, and on the other hand that the long practice of autocratic principles breeds intolerance towards opposition and violence towards whoever resists the will of such a government. Absolutism not only considers itself not bound by the sacred rights of other men and nations, but it cannot understand why it should be blamed for refusing to consider such obligations. In other words, free institutions are liberalizing and despotic institutions are brutalizing.

BOOK II
Local Government



BOOK II. LOCAL GOVERNMENT

CHAPTER XXI

CITY GOVERNMENT

Local Government in England Subject to the Central Government. We must keep in mind the distinction between a federal system, like that of the United States, where the powers of government are distributed between the federal government and the States, each in its own sphere entirely independent of any control by the other, and a centralized government, like that of England, in which all authority is vested in Parliament. In the United States control of the whole domain of criminal and civil law, including all matters of contract, marriage, divorce, education, the general relations of business and everyday life, and the qualifications for voting, even in national elections (with the exception that they cannot disfranchise a person on account of race) are in the control of the State; and the States and their internal subdivisions are entirely beyond the control

or supervision of Congress. In England on the contrary, not only are all laws, except mere municipal or county regulations, made by the national authority, but the very existence of every form and division of local government depends upon the will of Parliament, and their limited powers are conferred by that body.

Another and new consideration we must keep in mind: In describing the system of parliamentary and cabinet government, we have noted the resemblances and contrasts to the American national government. The viewpoint now changes, and we find that the helpful parallel is between the powers, functions, and relations of Parliament and English local governing bodies on the one side and the powers, functions, and relations of the American State government and American county and city governments on the other. The immediate superior of the local government division in England is the government in London; and by a proper correlation of the functions of the two, great improvement has been accomplished. The immediate superior of the local government division in the United States is the State government, and a study of what has been done in England suggests that by a proper extension of the unifying, coordinating, and regulating authority of the latter great improvement is possible in that part of our system which most needs improvement.

A Land of Cities. There are two general divisions of local government, city and country, or urban and rural. We shall describe the forms of city government first, because among the more important existing forms of local government in England they were created first and served as a model for the others. City government is of unusual importance in England, because about eighty per cent. of the population live in large towns and cities; and the proportion is increasing as England becomes more and more a manufacturing country.

In 1835 the corrupt and inefficient city governments dating from the middle ages were abolished and the present excellent system created.

Definition of Terms. The word city in England formerly meant a place which was the residence of a bishop of the established church, whether large or small; but this is no longer the case and the word now means simply any large municipality. The word borough is the word usually employed in English law to describe an incorporated town or city, and it is the word we shall generally use for that purpose.

Boroughs with Incomplete Municipal Powers. Boroughs are of three classes, varying in the extent of their powers of self-government according to their size, though the form of government of each is much the same. First, there are boroughs of ten thousand

inhabitants or less, which are subject in some matters of municipal government to the government of the county in which they lie. Such boroughs elect representatives to the governing body of the county to be later described.

Boroughs with Full Municipal Powers. The second class of boroughs are those with a population of over ten thousand and under fifty thousand. They possess the full powers usually belonging to a self-governing city, differing in this from the smaller boroughs, some of whose municipal officers are under the control of the county. These larger boroughs, however, form a part of a county and elect representatives to its government.

County Boroughs. The third class of boroughs are those of fifty thousand inhabitants or over. They are called county boroughs for the reason that they have all the powers of a county in addition to those of an ordinary borough; *i. e.* they have their own quarter sessions, etc., and their borough government discharges in addition to its functions as a city government also all those of a county government. Hence the county borough takes no part in the government of the county by which it is geographically surrounded and is not subject to that government.*

* A few cities having at the time fewer than 50,000 inhabitants were allowed the privileges of county boroughs, and some that have since grown beyond that size have chosen not to become county boroughs.

Urban Districts. Small towns are usually organized as urban districts instead of boroughs. As they are subordinate divisions of a county, they will be treated in the next chapter, though some of them contain a sufficient population to make them small cities in their circumstances, needs, and problems.

The Borough Council. A borough is governed by a Council, consisting of one chamber. The English do not use the system of a two-chambered government for their very large cities, as some American cities still do (though it is being abandoned in this country as unsatisfactory); nor do they confer any executive powers upon the Mayor. The government is thus in the complete control of the one-chambered body called the Borough Council having charge of all the functions of the government of the city, except the courts. This Council consists of two classes of members—councilmen and aldermen. They have the same power and form together one body, but differ in their election and terms of office.

The Councilmen. The Councilmen are elected by the qualified voters of the city by wards, for a term of three years. Usually each ward selects three, a third of them from each ward being elected each year. Thus two thirds of the existing councilmen are always old members and it is impossible, except in the few cities that elect all at once, to make a clean sweep of the old Council. To do so is not often desirable, as

corruption is uncommon, and the elections rarely turn on questions of party politics. The government of a city is largely a matter of experienced business administration in which the chief requirements are efficiency and honesty.

It is to be noticed that the commission form of government for cities which is becoming so popular in the United States often adopts the plan of electing a third, or other fraction, of the councilmen annually.

Numbers and Residence of Councilmen. The councilmen vary from nine in small boroughs to a little over a hundred in very large ones. As with members of Parliament, neither law nor custom requires the councilman to live in the ward by which he is elected. It is not uncommon for a workingman's ward to elect some wealthy citizen from another quarter of the city whose character and ability they trust.

Election of Aldermen. The number of aldermen on the Council is one third that of the councilmen. They are chosen by the Council for a term of six years, one half being elected every three years. At the election of new aldermen, the hold-over aldermen vote just as do the councilmen. It is evident that this arrangement would sometimes make it possible for the party in the Council that had been repudiated by the people at the recent election of the annually elected one third of the councilmen to

prevent the party thus receiving the popular approval from securing control of a closely divided Council by electing as the new aldermen men of the repudiated party. This has occasionally occurred¹; but there are several reasons why it constitutes a slight danger, as will presently appear, besides the fact that party politics do not enter largely into English municipal government.

Importance of the Aldermen. The aldermen may be elected either from the Council itself or from the general citizenship, and are chosen without reference to wards. As a matter of fact it is customary to elect councilmen who have proved their efficiency and public spirit; and the alderman is generally re-elected for many terms. It is not uncommon to find instances of continuous service for twenty-five years. The aldermen, moreover, possess greater influence upon the Council than their fellow-members—an influence won by ability, character, and long service—and are practically always the chairmen of the most important committees. They are thus a sort of permanent core which gives continuity to the management of public business.

The place of a councilman who has been promoted to alderman is immediately filled by an election in his ward. Neither councilmen nor aldermen receive any salary.

¹ Lowell, ii., 157-8.

The Mayor. The Council chooses annually, and practically always from its own membership, a Mayor. He is little more than the representative of the city upon ceremonial occasions. He has no executive authority and continues to be a regular member of the Council with the same duties in its business as before. His office gives him the powers of a justice of the peace; but in a large place his time is so taken up with formal and social duties that he is very much withdrawn from any participation in the government.

Salary, Social Duties, etc., of the Mayor. In some places the Mayor receives a small salary, but the expenses of entertainment and display are so great, reaching perhaps in a great city £5000 annually, that few men would be willing to hold the office more than one year. For this reason a rich man outside the city, or even a neighbouring peer,¹ is sometimes chosen. The honour is highly esteemed, and if good fortune brings a formal visit from the sovereign to the city, the Mayor is made a knight.²

Committees. The Council divides itself into committees for attending to the various branches of the city's business. As remarked above, the chairman of a committee is usually an alderman. The chairman and committee remain the same year after year, only such changes being made as vacancies, etc., require.

¹ Lowell, ii., 162.

Permanent Experts. Each branch of city business is in direct charge of a permanent and trained specialist who is elected by the Council, usually upon the recommendation of the committee over that department. Thus there are engineers over streets, drainage, sewerage, etc., health officers, school superintendents, electricians, chemists, trained officers of police. These positions are filled with entire disregard of whether the applicants are from the city or from hundreds of miles away, just as in the United States in selecting a superintendent of city schools. The various branches of city business thus become trained professions which young men adopt as they would law or medicine, and the Borough Council seeks to secure the best services for the citizens without reference to the applicant's politics or residence.*

The Civil Service as a Profession. A successful administrator is called from a small city to a large one just as in any other business or profession. In other words, the people of England do not imagine that public office is a private cinch for that small

* The author has known the water commissioners of a so-called progressive city in the United States to require an employee to break up his home just outside the city limits and move inside because some enlightened voters objected to an "outsider" holding the job. What benefit the citizens received by the serious inconvenience thus forced upon their servant never appeared; for in a year or two he was allowed to move back into the suburb. Probably they felt that they had maintained a valuable principle and also enjoyed thereby a greater degree of security against the despotism of some foreign tyrant.

fraction of the population who chance to seek it, nor that there is such a thing as Birmingham electricity or Leeds bacteriology or Conservative or Liberal mathematics and physics for the construction of pavements.

The Town Clerk. One of the most important of the permanent skilled officials is the Town Clerk. He is a lawyer and is supposed to be a man of administrative talent. He not only gives legal advice to the Council as a whole or to any of its committees, but exercises also a general oversight of the details of the city's affairs.

The influence of the various professional experts with their respective committees on affairs under their care, and of the Town Clerk on the whole Council in matters of general policy, is very strong. When the recommendations of the departmental experts have been amended and approved by the common sense and general knowledge of affairs of their committees, the Council naturally can rarely be induced to disregard them to any considerable extent.

Borough Suffrage. The right to vote for members of Borough Councils differs somewhat from that for members of Parliament. The voter must have occupied any house^{*} in the borough for residence or

^{*} "House" means any separate part of a building rented or owned on terms that make the occupier the head of a separate household, shop, or office.

business, of any value whatever, or land of an annual rental value of £10, and must have lived for one year previous to July 15th in the borough or within seven miles of it. No mere lodger¹ may vote, however. Widows or unmarried women may vote on the same qualifications as men.

The suffrage is extended to residents within seven miles who occupy houses or lands in the borough. This is on account of the large number of persons whose business is in the city but who live outside. Though this rule might give a few persons a right to vote who have slight interest in the city's affairs, to exclude these suburban dwellers would cut off many people having a high interest in the city's good government and business prosperity.

Women on Councils. Women may not only vote, with certain limitations,² for members of any local government Council, of either the borough, the county, or any smaller subdivision, but they may also be elected members of any of these Councils.³

The Borough Charter. Borough government is not forced upon a place, nor are two towns which have spread until they run into each other forced to unite under one Council. If, on account of local

¹ A lodger rents a room or rooms from some person who, whether tenant or owner, is the head of that household.

² See pages 237, 246, 250, and 260-1.

³ Of the Borough and County Councils only since 1907; of the lower Councils for many years. Wilson, 420; Lowell., ii., 211.

pride or fear of expenses of heavy taxation, the citizens of a region whose density of population really makes it a city wish to continue to manage their affairs simply as an "urban district" under the supervision of the county government, or to remain a separate borough from the city which is spreading around them, they may follow their own preferences. A charter creating a place a borough or merging it with another borough may be obtained from the proper authority of the central government in London.¹

Central Control. The central government contributes to the expenses of all local governments about one fourth of their total amount.² This is chiefly because Parliament controls many of the sources of taxation that in the United States are left in the hands of the State legislatures or local bodies. All bonds for the borrowing of money by any local government must be submitted to a department of the central government having supervision of local government. Also the by-laws, or ordinances, of Borough Councils and all other local governments on a number of important subjects must be submitted for approval to the Home Secretary or the Local Government Board, by whom they may be vetoed.³ This answers in a way to the constitutional limita-

¹ Lowell, ii., 145-6.

² *Ibid.*, ii., 190.

³ *Ibid.*, ii., 287-94; Wilson, 412.

tions under which all local governments rest in the United States.

In few if any States have we worked out satisfactorily the problem of how the city shall be allowed a free hand in those matters properly falling within a reasonable definition of "municipal home rule" and at the same time be protected by the supervisory power of the State from injuries to its own interests by sinister influences within itself, restrained from trespassing upon interests outside the city, and brought to do its part in the maintenance of the commonwealth's general system of law and order. The common plan of rigid constitutional restrictions, with great powers of arbitrary interference by the State legislature, has not worked well. Benefit might be derived from some more flexible system something like the English, of an advisory and supervisory State department better qualified to adjust the general and local interests equitably in particular cases.

Absence of "Politics" in English City Government. Politics is a word frequently carrying an unsavoury suggestion, because politics are so often brought into affairs in which they can only do harm. Politics as expressing the organized efforts of masses of men to secure the control of the government in order to enforce a certain set of principles instead of another are a proper and necessary feature of the life of a free people; but politics in the sense of seeking

positions for the salaries or other profits coming to those who hold the offices are necessarily bad and most likely corrupt.

City government is mainly a matter of honesty, efficiency, and business management. Hence to introduce "politics" is to substitute dishonesty, inefficiency, and mismanagement. From politics in this sense city government in England is almost entirely free.

Party Divisions in Municipal Elections. Holding city and parliamentary (*i. e.* national) elections at different times tends to keep city elections free from the influence of national politics and to leave voters free to vote for the best men instead of feeling bound to support their party's nominees for councilmen. The names of the two national parties are therefore not generally used in local elections, but are replaced by the names Progressive and Moderate.

The Progressives favor the extension of the city's activity in such lines as municipal ownership of gas and electric works, street railways, lodging houses for the poor, etc., while the Moderates generally oppose the further extension of these activities by the city or urge more conservative plans. The Progressives are naturally mostly Liberals in national politics and the Moderates Conservatives, though this is not always the case. National party feeling enters comparatively little into municipal elections

and still less into the choice of permanent officials by the Council. In the regular work of the committees and Council and the question of retaining permanent officials, politics do not enter at all. In some boroughs lines are not drawn on the candidates even as Progressives and Moderates, thus eliminating party politics entirely.¹

Efficiency and Purity of English Municipal Government. To quote the opinion of one of the best informed authorities, Prof. A. Lawrence Lowell, English city government is notably pure and efficient, though not brilliant. Corruption is of course occasionally found, and in some cases has been quite bad.

The prevalent efficiency and purity seem to be due largely to four causes:

First, the short ballot. With a few trifling exceptions, the voters choose only the councilmen and hence can know the character and history of the candidates. This is impossible where dozens of officers are to be voted for, and hence even the intelligent voter is obliged to vote on somebody's advice or blindly vote the straight party ticket, which probably contains some very crooked individuals.

Second, the absence of the spoils system. As all employees of the city are chosen on merit as determined by examination as described above on pages 158 and following, and hold their positions in the

¹ Lowell, ii., 152-3, 158.

same way as the employees of a bank or factory, *i. e.* so long as they deserve them, there is no corrupting influence of personal gain to interest the grafting politician or to tempt him to organize the voters.

Third, the permanent tenure of city employees. The influence on efficiency of employing expert officials purely because of their character and skill and retaining them so long as they perform their duties satisfactorily has already been explained on page 235.

Fourth, the re-electing of competent councilmen, and especially aldermen. We have already seen how this places the administration of the city in the hands of those best qualified. It leads many men of especial value to the public to offer as candidates who would not consent to undergo the annual or biennial recurrence of a violent campaign in which character and motives are assailed with slander and insults. Hence a very high class of citizen makes the service of the city his chief concern who otherwise could rarely be induced to do more than vote.

CHAPTER XXII

COUNTY GOVERNMENT

Nature of the English County. There is nothing in the government of the United States like the English county, just as there is nothing in England answering to the American State. The county is the largest self-governing division in England, just as our State is the largest self-governing area below the federal government; but here the resemblance ceases. The rights and powers of the States are protected in the United States Constitution and the States are the framework upon which the national government is built; but the county governments in England are the recent creation of Parliament and are not in any sense the foundations upon which the national government rests, and can at any time be legally destroyed by mere act of Parliament. This is only another way of saying that ours is a federal government, made up at first of previously existing States which retain large powers of their own, while England is a consolidated, or centralized, nation with all authority in the central government.

Local Government Divisions. There are in England the following kinds of local government besides the boroughs: Counties, urban districts, rural districts, parishes, and poor law unions. In this chapter we shall describe the county government system.

Origin of the Present System. The old system of county government by the justices of the peace was displaced by the present plan in 1888. The new system was modelled on the borough governments which had been created in 1835, and hence will not require such detailed description as we have given those in the preceding chapter.

Administrative Counties. Some of the ancient counties were too large for convenient administration, and hence they were subdivided. Even where not too large, the ancient outlines were often unsuitable, and accordingly the boundaries of the respective areas for the new county governments were made without strict regard to them. In fact in only about a half-dozen cases are their bounds the same.

An area having its own county government is called an administrative county, to distinguish it from the ancient historic counties, or counties at large as they are now commonly designated. There are in England and Wales fifty-two of the ancient counties at large, but sixty-two of the new administrative counties.¹

¹ Lowell, ii., 141, n. 1.

The administrative counties differ in population from about 20,000 to about 2,000,000, not to speak of the administrative county of London with over 4,500,000. The ancient counties have no governing bodies and are now used for only a few purposes; but they still retain in many instances an important significance in social and family life and much of their historic individuality.

The County Council. The government of an administrative county (or, as we shall say for short, of a county) consists of an elected County Council. The term is three years, and the members are all elected at the same time, one for each of the wards into which the county is divided for this purpose. Representatives are elected from every city, town, and rural section within the county, except county boroughs, whose Councils, as related in the preceding chapter, exercise within their bounds the powers of a county as well as city government, and which stand accordingly entirely apart from the counties by which they are surrounded.

The councilmen, as in the boroughs, elect a number of aldermen equal to one third of their own number, but unlike the boroughs, the existing aldermen cannot vote for the new aldermen. The aldermen are elected without regard to wards, and may come either from the council or from outside. Their term is six years, one half going out every three years.

The Chairman of the County Council. The County Council elects a Chairman. Unlike the borough Mayor, however, he has few social duties, but is an effective part of the working machinery of the government. He is not the head of an executive department, but remains simply a member and presiding officer of the Council; but he is customarily re-elected year after year and comes to be the most influential person in the government of the county.

County Suffrage. The qualifications for voting for members of the County Council are the same as for voting for councilmen in the boroughs, *i. e.* the occupation for any purpose of any building in the county for a year previous to July 15th, or of land for the same period of £10 value, and residence during the same period within the county or within seven miles of it. Mere lodgers cannot vote. Women without husbands may vote on the same qualifications as men.

Authority of the County Council. No greater mistake could be made than to suppose that the English County Council possesses an authority similar to that of the legislature of an American State. The great majority of the powers of an American State are exercised in England by Parliament. As already remarked, in comparing local government in England and our own country, the analogy to be kept in mind is that between the govern-

ment in London and that in the American State capital in their relations to local governmental agencies. Though the County Councils exercise decidedly subordinate functions, they possess a great deal more power than any governing body in the ordinary American county. California, however, is making an extremely interesting and important experiment in the difficult and so far sadly unsolved problem of American local self-government by allowing the people of a county to adopt a charter of government in very much the same way that the people of a State do a constitution. Under this some of the counties have set up a considerable degree of real self-government.

Perhaps it will give a fairly satisfactory idea to say that the powers of the English County Council cover in the districts outside the cities in general what those of the Borough Council do in the city, and some other things as well, such as roads, rivers, contagious diseases among animals, reformatories, lunatic asylums, and the smaller subdivisions for local government.

Meetings, Committees, etc. On account partly of the greater difficulty of getting together, the County Council usually meets only so often as required by law, namely, four times a year. For the same reason it allows its committees a freer hand in discharging business and possesses the right to dele-

gate to a committee any of its powers except laying taxes and borrowing money.¹

The County Council employs a Clerk of similar duties to those of the Borough Council Clerk and also a number of sanitary and engineering experts, who, as in the case of the similar borough officials, hold their places by merit regardless of politics. The members of the Council are even more generally re-elected than in the case of the boroughs, and also to a greater extent represent the upper class in the community. It is remarkable to how large an extent the English common people choose to leave their government, from the parish up to the Parliament, in the hands of a governing class. This class on their part accept it as a trust and keep in close touch with public opinion.

Central Control. The control of the central government is stronger over the county and other rural governments than over that of the borough. The by-laws and borrowings of both are subject to the approval or veto of the central government; but in addition to this, in the case of all local governments except that of the borough, the central government inspects their accounts and may compel any official who is responsible for the wrongful paying out of money to replace the amount. Also all matters relating to police, health, sanitation, education, gas,

¹ Lowell, ii., 272 *et seq.*

electric, water, and street car companies are very considerably under the central government's control, both in the boroughs and other local divisions. These powers of the central government are exercised in part by the Home Secretary, but principally by the Local Government Board.

As explained in regard to boroughs, the central government supplies about one fourth of the running expenses of the county and other local governments.

CHAPTER XXIII

SMALLER DIVISIONS OF THE COUNTY

Names of Local Subdivisions. For other purposes of local government the county is divided into smaller areas. These are the urban district, the rural district, the parish, and the poor law union. Each of these has its own elected Council, consisting only of the councilmen elected by the people, without any aldermen.

· **Suffrage in Local Elections.** Women, whether single or married, can vote in the elections for all these smaller districts on the same terms as men. As Prof. Lowell puts it, no woman can vote for members of Parliament; women without husbands can vote in county and borough elections, and all women may vote for officials of the smaller district governments. Women can also be elected members of any local government Council, in either city or county.

The Urban District. The urban district is a thickly settled neighbourhood, or even a town or

small city which has not grown large enough to need all the powers of a borough government or does not choose to avail itself of them. The principal differences are that the urban district does not enjoy all the powers of self-government that belong to a borough and that its Council contains no aldermen. Some places retain this form of government, however, after they have become much larger than many that have borough charters. They vary in fact from small villages to cities of almost fifty thousand inhabitants.¹

The Rural District. The rural district is simply a subdivision of the county. It is a country district exercising certain limited powers of self-government through its own elected Council.

The Parish. The parish is the smallest and least privileged of the governmental divisions of the county. If it has a population of over three hundred, it discharges its duties through an elected Parish Council; if it has fewer inhabitants, the voters meet in mass-meeting for the exercise of the slight powers belonging to the parish, in the same way as in a New England town meeting.

The Poor Law Union. The Poor Law Union consists of a number of parishes united for the support of an almshouse and the care of the helpless poor. Its officers, called Poor Law Guardians, are elected by the people. American counties of small

¹ Lowell, ii., 278.

population might well adopt such a plan for united support of their dependent poor.

Collection of Local Taxes. The only other important function of the parish is that it serves as the collection district for all local taxes outside the boroughs.¹ Just as in many American States, the county treasurer collects all taxes except for city purposes and turns over to the school district, township, or State authorities the amounts due each, so the parish officers turn over to the county, urban, or rural district and parish officials the taxes which they have collected upon the authority of the Councils of each of these local divisions respectively.

Local Activity and Central Supervision. Thus we see that England is subdivided in the most thorough manner for purposes of local self-government, although the central government through the Home Secretary, and particularly through the Local Government Board, exercises a considerable degree of control.

A much more suggestive contrast with the system of American State and county government is the fact that Parliament does not permit to locally elected officers, irresponsible to the central government, the enforcement or non-enforcement of parliamentary laws. The laws made in London are enforced by men responsible to London, just as in America the

¹ Lowell, ii., 283.

laws made in the State capital should be enforced by men responsible to the State government. As President Wilson pointed out many years ago, in the American State law is central, but its enforcement is local, without adequate power in the State government to see that its will is executed.¹ We boast of our genius for self-government and then enact State laws to be enforced by county officers whom neither Governor nor other State officials can give orders to or remove for refusal to perform the duties under State law which they are sworn to perform. We call the Governor the Chief Executive and expect him to achieve results when we have deprived him of the largest part of the machinery by which alone he can execute the law. The Comptroller-General, Auditor-General, or other such official is declared to be the chief tax officer of the State whom all county tax officers must obey; and yet these local officials defy his orders and the law itself with complete impunity and irresponsibility, so long as they avoid acts indictable by a grand jury. The Governor orders a sheriff to execute the decrees of a court and receives in reply an insulting message to enforce the law himself if he does not like the way it is being done; and to do this the Governor has no machinery except the militia, and government by militia is both bad and impossible; nor can he remove the sheriff

¹ Wilson, *The State*, 506-7.

who thus defies the law of the State, the chief executive officer of which he is in his county, except on conviction of crime.¹

The English have been as deeply prepossessed in favour of local self-government as the Americans, who brought from England both the instrumentalities and the love of local self-government. Their prepossessions have had to yield to their reason and the logic of the changed circumstances which modern life has brought.²

Even in the highest days of "State sovereignty" we never dreamed of leaving the enforcement of federal law to State agencies irresponsible to the federal government. That experiment proved sufficiently futile under the Articles of Confederation. But we still pursue the less logical system—a system moreover without the excuse of historical or constitutional argument to bolster it up—of a sort of county officer sovereignty, a sort of sovereignty our law has never known except by oversight. The State does possess sovereign authority for all matters of local government; and yet it contents itself with pronouncing its will, while it leaves its execution, which is the part that really counts, to locally elected officials over

¹ This description is of course not accurate in all details for every American State; it is believed, however, to be a fair representation of the general American system of State and county government.

² I thank Prof. Frank G. Bates, of Indiana University, for calling this to my attention.

whom it retains no administrative control, and retires into vacuity. No other civilized government commits such an act of self-effacement. We can imagine what a similar plan would do for the enforcement of federal law; we see plainly enough what it has meant for the enforcement of State law.

Associated with this irresponsibility of local officials for the proper administration of State law which is committed to them are the divided, independent, and sometimes mutually hostile executive departments of the State governments. It has happened in a number of States that the Governor did not dare to consult his constitutional legal adviser, the Attorney-General,^{*} and has been in bitter conflict with the State Treasurer, Auditor, Adjutant-General, and other heads of executive departments with whom he must co-operate in conducting the government. A moment's reflection reveals, as does even a cursory

^{*} In South Carolina in 1915 the absurdity of the system of divided executive responsibility was exhibited in unusually high light when the Legislature felt obliged to go so far as to appropriate for the use of the Governor in employing legal counsel in place of the Attorney-General, with whom he was in conflict, a sum exceeding the munificent salary of \$1900 provided for that important official. The money did not have to be used; but no one seemed to see in the incident anything to suggest an improvement in the system. Many thought doubtless that it was a splendid example of the system of checks and balances, and that if the Governor had the right to appoint the Attorney-General, after the manner of the President, he might select some man who would advise him to do something that would endanger the liberties of the people before he could be removed at the next election.

glance at the operation of the system, that no government can be efficiently conducted on such a plan. No other civilized government is conducted in such a tangle of mutual hindrance and irresponsibility. The President is the executive of the United States and appoints and directs the heads of the executive departments; and hence whatever his promises or policy, he has the machinery for their execution. If he proves a bad executive we know whom to relieve of office.

The States fell into the habit of dividing executive power in colonial days in order to take power from the Crown, and their experience with George III threw them into a panic at "one man power" from which they have not yet recovered. Now that the people have been their own sovereign for almost a hundred and fifty years, it seems that they might commit to their own servant, the Governor, a degree of authority somewhat similar to that committed to the President, so that their own servant might be able to do the things for which he is employed. So much the more is it necessary to improve both the personnel and the machinery of our government in view of the more extensive duties, the more difficult tasks, and graver responsibilities that the near future seems sure to lay upon the servants of the public.

Scotland and Ireland. Local government is on the same general plan in these countries as in England,

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with such modifications as are suggested by their historical peculiarities and sparser populations. In Scotland and Ireland women possess the right of suffrage and office-holding in local governments on the same terms as men.

CHAPTER XXIV

THE GOVERNMENT OF LONDON

Special Position of London. Though the government of the great metropolis of London is in general similar to the governments of the borough and county which have already been described, its importance and the experiments which it has made in the government of a great city require separate notice. London has always enjoyed a position of special privilege, from the time when William the Conqueror granted a charter guaranteeing her ancient liberties—a treasure still religiously preserved. Even to this day, on formal occasions the King is met at Temple Bar, the spot where stood the gate of the mediæval city, now of course in the heart of the metropolis, and is granted permission by the Lord Mayor to enter.

"The City" of London. Let us understand the different meanings of the name London. In the narrowest sense it applies to the area covered by the ancient mediæval walled city. This is a region covering barely over one square mile on the northern

bank of the Thames in the centre of the modern London which spreads away for many miles in every direction. It is still legally "the city of London," or for short, "the city." It extends from the Tower on the east to a point a little short of Westminster Abbey and the Houses of Parliament on the west. The population of this teeming business centre is by day among the densest in the world; by night it is less than twenty thousand. To this day it has its own city government.

The Administrative County of London. Surrounding "the city" is the administrative county of London with a population in 1911 of 4,522,961. This vast population is under the government of the London County Council; but even this does not include much over half of the people who live in what is called "Greater London." It is the London which the people of our own metropolis mean when they say that New York is the largest city in the world.

The Metropolitan and City Police District of London. "Greater London," of which we usually think when using the name, comprises an area of 693 square miles and in 1911 contained 7,252,963 people. Its legal name is the Metropolitan and City Police District. For a few purposes, such as police and water supply, all this vast area is under a common authority; but for most purposes of local

government the part of the metropolis outside the administrative county of London is cut up into a number of local divisions such as have been described in previous chapters.

Let us examine in turn the several governments to which we have referred. We shall take up first "the city."

Common Council of "the City." The "city of London" is under the government of its own elected Common Council, except for matters of street cars, sewers, fire protection, education, and a few other matters controlled by the London County Council, and except for water supply, which is under the Metropolitan Water Board.¹

"The city" is divided into twenty-six wards, each of which chooses one alderman, who, strange as it may sound in the twentieth century, holds for life. The wards elect also annually two hundred and six councilmen. The aldermen and councilmen all sit in one body as the Common Council.

The Lord Mayor. The twenty-six aldermen elect annually from their own number the Lord Mayor of "the city." Though he exercises the powers of a magistrate, his duties are mainly ceremonial and social, and his salary of £10,000 by no means covers the expense of this much coveted honour.

The Suffrage. The right to vote for Council

¹ Lowell, ii., 208-10.

members is somewhat wider in the whole area within the bounds of the county of London than it is in other cities; for it includes not only all men and unmarried women who can meet the ordinary borough franchise requirements, but also all men not in this class who may vote for members of Parliament. *I. e.* it includes not only all occupiers of lands worth £10 a year or of houses of any value, but also all £10 lodgers. As in all other boroughs and counties, women may be elected to the London County Council or to any of the Borough Councils now to be described.

Boroughs of the County of London. The vast city known as the administrative county of London is divided into twenty-eight boroughs, each of which has its own government, modelled after the form which we have already studied.¹ Each of these elected Councils governs its own borough in most matters like any other Borough Council; but the need of uniformity in many important matters necessitates the exercise of authority over the whole great city within the administrative county by one body, the London County Council.

The London County Council. Apart from the legislatures of great states or nations, the London County Council is one of the most important govern-

¹ The Borough Councils in London have only one sixth as many aldermen as councilmen, and the existing aldermen are not allowed to vote for new aldermen.

ing bodies in the world, presiding, as it does, over many of the interests of four and a half million people. The entire area of the county of London, including "the city," is under this body. The districts for electing members of Parliament serve as wards, each electing two members for three years. The councilmen elect aldermen, as usual, for six years, equal to about one sixth of the councilmen, one half going out at a time.

The Council, as in other counties, elects a chairman; but in London he is not re-elected and so acquires little influence. As in other places, the method is followed of transacting business through committees, permanent professional expert officials, etc.

Politics. The London County Council differs from most English County and Borough Councils in the prominence of politics in elections and Council meetings. This is largely because the Progressives in London have adopted an extensive program of social and economic reforms, covering such matters as street car transportation, model tenements for rental to the poor at moderate rates, etc., that raise strong enthusiasm or opposition. But their politics are independent of national party lines and turn almost wholly on matters of local concern.*

* Lowell, ii., 217-18; 231-2. Lowell points out that while London is strongly Conservative in national politics, it is strongly Progressive in local; also that party lines are so closely drawn that the Moder-

Metropolitan Boards. A few matters, the chief of which are concerned with police and water supply, so plainly require unified control that they are managed by the Metropolitan Police Board and the Metropolitan Water Board of the entire metropolis of seven and a half million people, only a little over half of whom live within the county of London.

Though Greater London forms the Metropolitan Police District, the police are under the control of the national government, except that "the city" has its own system.

Parts of the City outside the County of London. When the first steps were taken towards a new system of government for modern London, it was intended to include under one authority the entire metropolis; but the rapid and unforeseen growth of population has extended into a surrounding region almost six times the area of that then organized under the new government and containing already almost as many people. These three million city dwellers outside the county of London are organized into separate boroughs or urban districts independent of any common management, except so far as controlled by the Metropolitan Boards of Water and Police. The English have come to fear that setting one Council over such an immense population as that contained

ates and Progressives employ whips in the Council to keep their members in line. For definition of whips, see page 76.

in the entire metropolis might prove dangerous, and are watching with interest such experiments in the management of great urban areas under one administration as that afforded by Greater New York.

BOOK III

Empire and Colonies

BOOK III. EMPIRE AND COLONIES

CHAPTER XXV

COLONIES AND MOTHER-COUNTRY

Peculiar Character of the British Empire. The only other empire in history that can be compared in extent, variety, and complexity with the British Empire is that of ancient Rome. And yet they are very different. The British Empire is unique in history for several reasons. In the first place, it includes large numbers of almost every race and colour of men. Second, it lies in every zone of temperature from the regions around the poles to the tropics. Third, it has no territorial connection, but is scattered in every part of the world, exposed to possible enemies from any quarter. This vast empire, comprising more than a fifth of the land and more than a fourth of the people of the earth, has been built up by one of the smallest of the great nations of the world through its genius for statecraft.

Enlightened Administration. The government of

the numerous and varied dependencies, though in the past sometimes marked by ignorance, error, and selfishness, before English statesmen had come to realize the nature of the responsibilities that expanding dominion imposed upon them, is today conducted with a liberal regard for the well-being of the governed. Indeed experience has proved that in no other way can its subjects be kept loyal; and they are far too numerous to hold down by force. An inestimable blessing has been the extension of England's just and liberal criminal law throughout her dominions. Provisions exist, of course, to meet local needs; but the underlying basis of the criminal law throughout the Empire¹ has been made the same as that with which Americans and Englishmen are familiar. The Empire presents the object lesson of a small number of civilized white men gradually repressing the barbarous customs of the backward races of mankind and leading them into a higher life. Admiral Dewey declared: "After many years of wandering I have come to the conclusion that the mightiest factor in the civilization of the world is the imperial policy of England."

No Tribute. The possessions pay nothing to the support of the British Government, but on the con-

¹ With the exception of a few possessions. Some colonies also retain their own system of civil law. *Cyclopædia Britannica*, vii., 462.

trary are a source of expense to the government, as *e. g.*, because of the great navy which must be maintained for their defence. Each colony, however, bears the cost of its own government, paying out of its taxes the salaries of the governor and other officials sent from England, as well as of those who are natives or are elected by the people of the colony.

The Advantages which England Derives. Though the colonies pay no tribute, they are nevertheless of great advantage to Great Britain. First, her trade with these vast regions is much greater than it would be if they were not under her flag. This makes her manufacturers, merchants, and ship-owners very rich and thus creates immense resources for taxation and other national needs. The merchants, etc., are the sponges which absorb gold from all over the world; the government then squeezes the sponges. Associated with this advantage is the employment for millions of working-men who carry on the labour of this system of manufacture and commerce.

A second benefit is that the colonies that lie in the temperate zones furnish homes for the large numbers of people who leave the British Isles because of crowded conditions. Instead of being lost to the mother-country, they build up new and powerful Englands all over the world.

A third advantage is that these possessions supply means of defence against enemies who, if they held

them, would forbid England's trade or cripple her industries; for, although England has heretofore allowed all nations to trade with her colonies on an equality with herself,¹ such a policy could not be expected of most of the powerful European nations, whose policies are along lines of restriction rather than of free trade.

A fourth benefit is that in time of war the colonies send troops, and some of the larger send warships, for the defence of the mother-country. In ordinary emergencies the armies sent by the colonies are paid out of the British treasury; but in a great struggle the colonies pour out their money as well as men for the defence of the Empire, which they feel is as much theirs as it is the mother-country's.

Secretary of State for the Colonies. The relations of mother-country and colonies are in charge of a Cabinet Minister entitled Secretary of State for the Colonies. He has oversight of Britain's world-wide empire, with the exception of some "protectorates," which, though practically colonial possessions, are technically foreign and are hence under the Foreign Secretary, and with the exception also of India, whose vastness necessitates a department of its own.

¹ A few restrictions are laid on outsiders by colonial, not by English, law. What will be done to execute the threat of severe strictions against the commerce of former enemies after the Great War, only time can tell.

Varying Degrees of Control. The degree of authority which the Crown actually exercises in managing the affairs of different colonies varies greatly, as will appear when we reach that subject; and hence the duties of the Colonial Secretary range all the way from keeping a great colony like Canada in good humour to directing entirely the government of some savage possession in Africa.

Four Classes of Dependencies. The numerous varieties of dependencies belonging to the Empire may be grouped into four main classes: Self-governing colonies, crown colonies with partial self-government, crown colonies without self-government, and protectorates. The general character of each class is apparent from its name, and each will be described in detail in the following chapters.

A Loosely Organized System. The Empire has no organic common life in which all the parts participate. There is no common government in which each has its share. One colony has no connection with the others, except that in some cases, to be described, several lying near each other have been united into unions; but a union of this sort is rather of the nature of one separate colony whose parts exercise control in local affairs. So free, in fact, are the self-governing colonies to follow their own devices that they lay tariffs against each other and against the mother-country and in some cases even

forbid immigrants from certain other colonies, as, *e. g.*, British Columbia attempting to exclude the Hindus.

The unity of the Empire consists in a common patriotism and the dependence upon a common mother-country. The Empire, as suggested by this term, may be thought of as a mother with her family of daughters; but all the daughters are never gathered in any family circle, though the more advanced of them are beginning to meet together with the mother for common council, and many of them do not even know each other.¹

Colonial Agents. For each colony there is an agent residing in London, in close touch with the colonial department. In the self-governing colonies he is elected by the colony, in the non-self-governing he is appointed by the Secretary of the State for the Colonies. It is his duty to keep his colony informed of anything affecting its interests, to prevent unfavourable measures in Parliament or the colonial department, and to put such information at the disposal of these authorities as will guide them in the proper discharge of their duties. Benjamin Franklin was for many years the Agent for Pennsylvania, and at times for as many as four colonies at once, in which position he discharged his duties in a way that ranked him in importance with the most distinguished ambassadors.

¹ For the imperial Conferences here referred to, see page 332.

Means of Imperial Control. The control of the mother-country is exercised through these four means:

First, the royal Governor, who represents everywhere the authority of the same Crown and loyalty to a common Empire.

Second, the power of the Governor, and above him of the Crown (*i. e.* the Minister for the Colonies) to veto any act of a colonial legislature, thus preventing measures which tend to injure common interests or weaken the imperial tie.

Third, the control of foreign affairs, by which means any foreign power is prevented from interfering with any part of the Empire or winning away the allegiance of a colony, and a colony is prevented from sacrificing the interests of the Empire to its own particular interests.

And lastly, the right of appeal from the highest court of a colony to the Judicial Committee of the Privy Council in England.¹

After a brief account of the system of home rule provided for Ireland, we shall explain more fully the government of the various classes of colonies.

¹ Lowell, ii., 402.

CHAPTER XXVI

IRISH HOME RULE¹

Peculiar Situation of Ireland. Ireland is not a colony, but she occupies such an important and peculiar position in the Empire as to demand a separate notice. Due to racial, religious, and economic differences, the problem of ruling Ireland and England under one government presents unusual difficulties. Complete national independence for the smaller island would be perilous in the foreign relations of both; to admit Ireland to full participation in a common Parliament is a delusive equality, as she is so much smaller in population as to be practically reduced to subjection to her larger partner. The Home Rule Act of 1914, passed over the opposition of the House of Lords,² is an attempt to preserve the advantages which both peoples derive from union towards the rest of the world and at the same time

¹ The statements in this chapter are based on the law itself, as passed in 1914, and hence differ in some points from statements made from the incompleting bill.

² See page 24.

allow the smaller country the freedom of ordering her own internal affairs. The provisions of this law are as follows; but on account of the outbreak of the Great War in Europe and the violent opposition in north-eastern Ireland to Home Rule, the system has been suspended from going into immediate operation.

Representation in the Imperial Parliament. The legislative union between England and Ireland dating from 1800 is not destroyed, though profoundly modified, by the Home Rule Act. Ireland is still to send forty-two members to the British House of Commons,¹ possessing full powers in debating and voting on all questions concerning any part or the whole of the Empire. The twenty-eight Irish representative peers continue to sit in the House of Lords.

The Irish Parliament. The Irish Parliament, meeting in Dublin, consists of two houses, a Senate and a House of Commons. The House of Commons consists of 164 members, elected for five years unless sooner dissolved. Nine districts elect three, four, or five representatives on one ticket; many elect two, and the others one. In the case of the nine first mentioned, the election is arranged in such a way that any considerable minority of the voters who agree to concentrate their preferences may elect

¹ Instead of 103, as before.

one member of the three or perhaps two of the five. Some representation of the minority is necessary for just legislation and good administration in any government, and particularly in a country in which minority and majority consist of permanent classes with opposing interests.¹

For the first five years, the Senators, of whom there are forty, are to be appointed by the Lord-Lieutenant of Ireland, the representative of the imperial government in Ireland, after which they are to be elected all at the same time, for a fixed term of five years, which is not to be affected by dissolution of the House of Commons. Each of the four provinces into which the country is divided elects, in proportion to population, from six to fourteen Senators on one ticket. The same means of securing representation for the minority is employed as in the election of the Irish House of Commons.

Not only any commoner, but any peer, either Scotch, English, or Irish, may be a member of either house of the Irish Parliament. Unlike the British usage, a Minister may speak in either house, though he may vote only in the one of which he is a member.

Supremacy of the Commons. Following the principle achieved in the Parliament Act of 1911,²

¹ The Irish Parliament will contain two university members (see page 31).

² See page 24. The same exception is made as in the British Parliament Act of 1911 in the case of private bills.

the Irish Senate cannot interfere with bills for raising or spending the public revenues; and their opposition to bills of any other kind may be overcome within two sessions, by the Commons demanding a joint sitting, in which the two bodies vote as one. If the measure had any decided majority in the House, it would be almost sure of passage by this joint vote.

The Responsible Ministry of the Irish government will exercise the same functions and stand in the same relations to the House of Commons as have already been explained in describing the English Government.¹

Limitations upon Home Rule. The Irish Parliament possesses by no means the unlimited power, even in Ireland, that the imperial Parliament exercises in England or other parts of the Empire. Its limitations are such in fact as to cause serious dissatisfaction among most of the Irish people, though it is difficult to see how they could at present be made less without inviting rebellion by the minority in the north-east who are opposed to Home Rule in any form.

Some of the restrictions are temporary and may be removed after a few years if the Irish Parliament so desires, as, *e. g.*, the control over the police,² old

¹ See Chapters IV and XI.

² The police pass under Irish control automatically at the end of six years.

age pensions, working-men's insurance, postal and other savings banks. Of the permanent restrictions, the most important are that the Irish Parliament (1) may not pass any law concerning the Crown, (2) nor coinage, (3) nor levy any tariff, income, or internal revenue duty more than ten per cent. higher than the rates enforced in England¹; (4) nor charge any import duty on any article not on the English list of dutiable articles; (5) nor impose an import or export duty on commerce with Great Britain; (6) nor legislate on treason, peace and war, and foreign relations; (7) nor alter the laws established during the past few decades for accomplishing the gradual transfer of land from the great landlords to small farmers²; (8) nor establish any state church, nor set up any religious test for office, employment, or any other purpose, nor in any way give one religion an advantage over another. Nor may Ireland alter the Home Rule Act itself.

Privileges. In view of the poverty of Ireland—largely the result of England's injustice in the past—Ireland is not only to contribute nothing to the support of the imperial government, but is to receive from that source a gift, beginning at £500,000

¹ Except that they can tax liquors as high as they choose.

² The Irish Land Purchase Act of 1903 is said to have turned from renters to owners 300,000 farmers, occupying more than half the area of the country.—WILLIAM O'BRIEN in *Nineteenth Century and After*, lxvii., 429 and 433.

a year, and gradually sinking after nine years to £200,000 a year.* Ireland is thus relieved of the stupendous burden of military and naval expenditure while enjoying all its benefits. Irishmen who choose to enlist will of course still form part of the armed forces of the Empire.

Reserved Powers of the Imperial Government.

Besides the fact, which must always be kept in mind, that the British, or as it is often called, the imperial, Parliament is supreme throughout the Empire, there are the following reservations specifically stated in the case of Ireland:

The Lord-Lieutenant of Ireland (the appointee and representative of the Crown) can veto any act of the Irish Parliament, and so may the imperial government itself. The King's Privy Council (which practically means the British Ministry) can quash any law of the Irish Parliament or act of an Irish official that is contrary to the Home Rule Act in much the same way in which the United States Supreme Court annuls an unconstitutional act of Congress or of an executive officer. And finally, the imperial Parliament (in which the forty-

* If Ireland shall in future come to be more prosperous, a revision of the financial arrangement with Great Britain may be made by the imperial Parliament, for which purpose the Irish will send to that Parliament a number of representatives proportionate to her share of the population of the United Kingdom. This would be almost double her forty-two there regularly under the Home Rule Act.

two Irish members have voice and vote) may in case of need pass any law for Ireland that it deems fit.

Final appeal from Irish courts may be taken to the Judicial Committee of the Privy Council¹ instead of to the House of Lords as formerly.

The Future. The degree of Home Rule which has been attained marks a long step towards removing the ancient blighting animosity between England and Ireland. So far "the Emerald Isle" has less self-government than Canada, Australia, or South Africa, and it is certain that her demands will not cease until she is placed more nearly on an equality with other parts of the United Kingdom. The difficulties of the problem have already caused British statesmen to study more carefully the federal system as it exists in the United States. The solution, not only of this, but of other serious imperial problems, may ultimately come through the adoption of some form of federalism, which has so wonderfully succeeded in our own country in serving the common national interests of the people and at the same time preserving their rights of local self-government.

¹ See page 202.

CHAPTER XXVII

SELF-GOVERNING COLONIES AND DOMINIONS¹

Legal Supremacy of Parliament. Though Parliament has supreme authority over every part of the British dominions, it cannot conveniently interfere constantly in the affairs of distant colonies, first, because of lack of time and information, and second, because that would create dissatisfaction. In the case of the great self-governing colonies it has accordingly passed laws somewhat similar to the constitution of an American State, describing the form of government and laying down the duties, powers, and limitations of the various officers and departments. Just as a State constitution is the directions of the sovereign, the people, for conducting the government of the State, so these laws are the directions of the sovereign, Parliament, for conducting the government of the colonies.

¹ An exhaustive work on every detail of the subject is A. B. Keith's *Responsible Government in the Dominions*. 3 volumes. Oxford, 1912.

The self-government of the great confederations of Canada and Australia goes so far that their constitutions were in fact drawn up in the colonies and then at their request enacted by Parliament; and much the same is true of South Africa.¹

Dominions. Canada, Australia, South Africa, and New Zealand are called dominions. Though New Zealand is not a federation, as are the other three, and cannot rival them in area of population, yet her political vigour, her critical geographical situation, her imperial loyalty, and the importance of binding her as closely as possible to the Empire, led in 1907 to her being raised to this honourable rank. A Dominion occupies a position of prestige and consideration distinctly superior to that enjoyed by an ordinary self-governing colony. It is consulted "automatically" so far as possible on international agreements affecting its interests, and the four Dominions may together almost be regarded as a sort of advisory council on imperial affairs. For instance, in July, 1911, the Anglo-Japanese alliance was revised and renewed with their knowledge and concurrence.²

Confederations of Colonies. In somewhat the same way that the thirteen colonies which formed the United States perceived that they could serve

¹ Lowell, ii., 400; *Cyclopedia Britannica*, 11th edition; Sir Charles Fitzpatrick "On the Constitution of Canada," *Repts. Amer. Bar Asso.*, xxxix., 410.

² Cross's *England and Greater Britain*, 1081, n. 2.

their common interests by uniting for certain purposes of government, so in later years groups of British colonies have drawn together for common ends, but without any idea of separating from the mother-country. These confederations present a combination of the principles of the governments of England and the United States. The responsible Ministry and the parliamentary system are derived from the former; but the federal principle of uniting for purposes of common concern, while retaining the functions of local self-government in each province is copied from the latter.

THE DOMINION OF CANADA

Composition of the Dominion. The oldest and most important of the colonial federations is the Dominion of Canada, which dates from 1867. The principles of responsible government by Parliament and Ministry are practised here more completely than in any other place outside of the mother-country. The Dominion consists of ten member provinces, as our own country consists of forty-eight States, and has also one territory without the privileges of membership and self-government.¹

¹ Yukon, though called a territory, has a representative in the Dominion Parliament and an elected Council for local government. "The Northwest Territories" has neither.—*Statesman's Year Book for 1915*, 274-5, 312-13; Northwest Territories Act of 1906, section 6; Yukon Act of 1908, section 7.

The Governor-General. The formal head of the Dominion executive is the Governor-General, who is appointed by the Crown, *i. e.* the Prime Minister, after consultation with the Colonial Secretary. The position of the Governor-General in Canada is similar to that of the King of England, and hence the law in saying that he does thus and so is always to be understood as meaning that he acts in accord with the advice of his Ministers. Yet a wise and tactful Governor-General exercises a very real and important influence on the course of administration and legislation.¹ One Governor-General has even declared that he found that he could accomplish more as the executive of Canada without legal power than he could in some other colonies with it.

The Veto. Laws in Canada, as in other colonies, are subject to two vetoes; that of the Governor-General and that of the British Government. The Governor-General may take any one of three courses regarding bills passed by the Dominion Parliament. First, he may refuse to sign. This is commonly called vetoing the bill, and kills it at once, though the King (*i. e.* the British Ministry) may reverse this action and save the law. Second, he may sign the bill. The King (*i. e.* the British Ministry) may, after this, kill the law by vetoing it within two years, but not after that time. Third, the Governor-

¹ Cf., e. g., *Repts. Amer. Bar Asso.*, xxxix., 414.

General may decline either to sign or veto the bill but instead may reserve it for the King's decision. The King may veto or confirm the bill at any time within two years. If he does neither within that time, it dies of itself.¹ The tendency seems to be for the veto, whether by the Governor-General or by the King, to settle into a sort of supreme court function of annulling at once laws thought to be unconstitutional because transcending the powers granted the legislature in the fundamental law, instead of waiting for their annulment by judicial process in the course of a lawsuit.

Yet the veto is so rarely exercised over Dominion legislation that we may say that it is gradually becoming almost as much the Governor-General's obligation to sign all acts presented to him as it is the King's to affix his signature without question to any act of Parliament in England, unless the act of the Canadian Parliament be one which is clearly injurious to important imperial interests. In fact it is admitted that the Governor-General has practically no choice but to sign measures concerning Canadian affairs alone; and he exercises less and less power of vetoing even laws, such as tariffs, that affect the mother-country or relations with foreign states.

The Prime Minister the Real Chief Executive.

¹ British North America Act, sections 56-7; Keith, ii., 1009, 1010.

The prominence of the Governor-General must not blind us to the fact that the real chief executive in Canada is the Prime Minister of the Dominion. His position is as exact a copy as possible of that of the British Premier.

The Governor-General must act in accordance with the advice of his Ministry. If he should refuse to do so, they would resign. If the Governor-General could obtain a new Ministry who would adopt his views and could command a majority in the Canadian House of Representatives, he would succeed in having his way; but only because the event proved that the people's representatives approved his policy rather than that of his former Ministers. If the House of Representatives refused to sustain his new Ministers, he would be obliged to recall his old ones and submit to their policy. Such an attempt of the Governor-General would be most unusual, if indeed we may not consider it today entirely in the realm of theory.¹

Parliament and Ministry. The Dominion Parliament consists of a Senate appointed for life from Canadians by the Governor-General (acting, of course, on the advice of the Canadian Ministry), and a House of Commons elected by the people for a term of five years unless sooner dissolved. Parties,

¹ Sir Charles Fitzpatrick in *Repts. of Amer. Bar Asso.*, xxxix., 414-5.

Premier, and a Ministry responsible to the lower house play the same part as we have already observed in England. The Commons are much the more powerful body, as they make and unmake Ministries and introduce practically all legislation. The only legal limitation on the power of the Senate is that it may not originate any bill for imposing taxes or spending money; but by custom it has settled into a position similar to that of the Lords in England as a house of cautious revision. The Senate rejects measures of the House of Representatives but rarely.

No colony has any system of nobility or other hereditary titles, though the title of Sir has been conferred by the British Government upon a number of colonials and titles of nobility on a few. Those created peers, however, have been so closely identified by long residence or otherwise with the mother-country as to be almost as much Englishmen in the narrower sense as citizens of the colonies. In Australia the aversion to titles is so strong that numbers of prominent statesmen have declined them, and a resolution has been offered to make the bearing of them in that country illegal.¹

The Supreme Court. There is a Dominion supreme court to hear appeals from the provincial supreme courts. Appeal lies in the last resort from

¹ Keith's *Responsible Government in the Dominions*.

this to the Judicial Committee of the Privy Council in England. Among the most important and difficult cases have been those involving the relative rights of the provinces and the Dominion. They have usually been decided in favour of the latter.

The position of the Canadian court will appear more plainly by comparison and contrast with the Australian Supreme Court, as explained on page 294. Though the Canadian Supreme Court may declare an act of the Canadian Parliament null because in conflict with the constitution, as we might call the British North America Act by analogy with the American written Constitution, it is not the supreme guardian and ultimate authority in defending the constitution, and hence cannot be considered co-ordinate with the legislature. In fact it is not created by the constitution, but is simply authorized as a court which the Canadian Parliament may create and organize as it sees fit.¹ The final decision rests with the Judicial Committee of the Privy Council in London. This body, like the Supreme Court of the United States, annuls Canadian laws because of their conflict with the Canadian fundamental law, and not because of any opinion simply as to their injustice or unwisdom.

Both the Dominion judges and the provincial judges are appointed by the Dominion executive

¹ British North America Act, section 101.

during good behaviour. There is no separate system of provincial and Dominion courts, as the State and federal courts in the United States, but provincial and Dominion law is administered in the same courts.¹

The Provinces and the Dominion. The ten member provinces of the Dominion conduct their own local affairs in much the same way as do the States of our Union. Except Nova Scotia and Quebec, each has an elected Legislative Assembly of one house. These two ancient provinces have also an appointed upper house, or Legislative Council, though, as in the others, the provincial Ministry is responsible to the popularly elected branch in the same way as the British Ministry is to the House of Commons.

The Canadian provinces do not, however, enjoy such an extensive or secure body of powers that the central government must respect, as does an American State. Their taxing power is so far restricted that they receive large gifts annually from the Dominion government, and they occupy in every way a place much inferior in independence and dignity to that of a member of our federal Union. In fact the principle of reserved powers in the United States and Canada is exactly opposite; for, whereas in the

¹ British North America Act, section 96; Egerton's *Federations and Unions in the British Empire*, 210, n. 1.

United States certain enumerated powers are granted to the central government and all others are reserved to the States, in Canada the powers which the provinces are intended to exercise are named and all others are reserved to the Dominion government. The latter can accordingly control a great many things which in our country are reserved to the individual States. As indicated in the last section, the tendency of constitutional interpretation by the supreme court is distinctly towards magnifying the power of the central, or Dominion, government.

Another feature of the supremacy of the Dominion government is the fact that the Governor-General may within one year veto any act of a provincial legislature. In this, as in the performance of his other governmental functions, he acts on the advice of his Ministry, or, in the rare cases calling for the veto of a provincial law for imperial reasons, on the orders of the government in London.

The Provincial Executive. The chief executive in each province is the Lieutenant-Governor, appointed by the Governor-General and possessing a theoretical veto power. But "the official Canadian view is that refusal of assent" by the Lieutenant-Governor "is never legitimate" except on the advice of the Prime Minister of the province or the Dominion Ministry. The method of vetoing or consenting to provincial laws is the same as that described

for the Dominion, except that the Governor-General stands in the place of the King and the Lieutenant-Governor in that of the Governor-General, and the period during which the provincial law may be vetoed or allowed to die of neglect by the Governor-General is one year instead of two. The Lieutenant-Governor of a Canadian province in fact represents the Governor-General rather than the King. Provincial laws involving grave imperial interests may be sent to England for the consideration of the King (*i. e.* Ministry), but the Canadians object so seriously that it is rarely done.¹

The actual executive is the Ministry of the Province, similar in its small sphere to that of England or the Dominion, after which it is modelled. They must resign when out of sympathy with the provincial legislature, unless by a dissolution they can obtain a new house to support them.

Yukon has not yet developed a responsible ministry, though the Commissioner, as the executive is called, is expected to govern in accord with public opinion, and may dissolve the little legislature of ten members and call for a new election to ascertain this.²

THE COMMONWEALTH OF AUSTRALIA

Nature of the Commonwealth. The next oldest of the colonial federations is that of Australia, which

¹ British North America Act, section 90; Keith, ii., 725-32, 1009.

² Keith's *Responsible Government in the Dominions*, ii., 767.

went into operation in 1901. It includes Tasmania as a member, one Australian territory not yet admitted to membership, and controls the neighbouring British possession of Papua. The members, called "States," form a union which is modelled much more upon the government of the United States of America than is that of Canada. In fact, it is a striking example of the fusion of the distinctive features of the English and American systems. As in the United States, the powers of the central (or "Commonwealth") government are enumerated and all other powers are reserved to the "States," though the powers granted to the federal government are more extensive and touch more intimately the daily lives of the people than is the case in our American federal republic. "State rights," however, are jealously guarded. In fact the Australian Supreme Court regularly speaks of the "sovereignty" of the State alongside the "sovereignty" of the Commonwealth.¹ Decisions of the United States Supreme Court are quoted freely by the Australian courts in their bearing upon the principles of federal government.

The "Federal" Parliament of the Commonwealth consists of a House of Representatives elected for three years in proportion to population and a Senate of six members from each State elected, one half at a time, for six years. A prolonged disagreement

¹ Keith, ii., 809.

between the two houses may be settled by dissolving both and appealing to the people in an election of new members. In all elections, State and federal, men and women vote on equal terms.

The Governor-General and the Ministry. The executive of the Australian Commonwealth is similar to that of the Dominion of Canada, the nominal executive being the Governor-General sent from England, and the real executive the Australian Premier and Ministry responsible to the Commonwealth House of Representatives.

The Veto. The Governor-General may refuse his assent to acts of the Commonwealth Parliament or reserve acts for the consideration of the King (*i. e.* the British Ministry), in the same way as described on page 284 for the Governor-General of Canada, except that the time limit for the veto is one year instead of two. A bill neither signed nor vetoed dies by neglect at the end of two years, as in Canada.¹

Though the veto is more often used in Australia than in Canada, its employment in either Commonwealth or State government is rare.

The State Governments. Each of the six States has a two-chambered legislature and a Ministry responsible to the lower house. The States jealously maintain their rights against the federal

¹ Keith, ii., 966, 1015, and 1019.

government, and are much more independent than the provinces of Canada.

The nominal executive is the Governor, appointed directly by the Crown (*i. e.* the Secretary of State for Colonies). The functions of the Governor and King in the signing or vetoing of State laws are the same as described on page 290 for the Governor-General of Canada. The Governor-General has no veto over State laws.¹

The Commonwealth Supreme Court. The Australian, or as it is called, the Commonwealth Supreme Court, enjoys a greater authority than that of Canada; for it is created by the Constitution and is recognized as a co-ordinate branch of the government with the legislative, as is the judicial department in America; while the Canadian court is created and its rights are defined by the Dominion Parliament and is clearly subordinate to the Parliament.

The Commonwealth Supreme Court declares null acts of either the Commonwealth or the State legislatures because contrary to the Constitution, *i.e.* "The Commonwealth of Australia Constitution Act." Only with the consent of the Supreme Court can appeal be taken to the Privy Council in London "upon any question, howsoever arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States, or

¹ Keith, ii., 1013-16.

as to the limits *inter se* of the Constitutional powers of any two or more States."

Let us carefully note that the prohibition of appeal to the Privy Council is forbidden only in cases touching the relations of the Commonwealth and the States. It would therefore appear that matters of law not raising constitutional questions might still be carried to that tribunal. It is in fact provided that, "except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court¹ to Her Majesty in Council." It is provided, however, that the Australian Parliament may by statute limit this right of appeal, but that such laws shall be sent to England for the approval of the sovereign, *i. e.* the British Ministry.²

Appeals on constitutional questions can go from the State courts only to the Commonwealth Supreme Court, though on some matters not constitutional appeal may be carried from the State courts to the English Privy Council.

Amending the Constitution. The method of amending the Commonwealth Constitution offers too suggestive a lesson in federal government to be over-

¹ The title of the Australian Supreme Court.

² Australian Constitution Act, Chapter III, Section 74. Cf. Egerton's *Federations and Unions in the British Empire*, 58, 67, 212-13 and notes.

looked. To many Americans, accustomed to the unusual rigidity of our own Constitution, the Australian process will appear to permit a dangerous instability; to others it will appear to offer a model towards which we should at least in some degree incline. If both houses propose an amendment by a simple majority, or if one house thus passes it twice in not less than three months in the same or the succeeding session, it must be submitted to a popular vote. It is ratified by a mere majority of the total vote, provided it also has a majority in more than half the States. Senator La Follette in fact in 1912 introduced in Congress an amendment to adopt this plan for amending our federal Constitution.¹ This is doubtless erring almost as badly on one extreme as does our present constitutional method on the other, by which it is possible for the thirteen smallest States containing about a forty-fourth of the country's population to defeat an amendment demanded by practically the whole country. Of course the thirteen smallest States will never range themselves in this way; but none the less it is to be doubted whether any amendment to the American Constitution can secure adoption until after it has long been demanded by an overwhelming majority of the people.

¹ Australian Commonwealth Constitution, Chapter VIII.; Beard's *American Government and Politics*, 63.

THE UNION OF SOUTH AFRICA

The Union Parliament. This latest colonial union, dating from 1910, consists of the four southernmost provinces of Africa—the only ones inhabited largely by white men—and provides for the eventual admission of Rhodesia. The Union Parliament consists of a House of Representatives elected by the people and a Senate of eight members elected from each of the four provinces of South Africa, and eight more members for the entire union appointed by the Governor-General on the advice of his Ministry, making a total of forty. A deadlock between the houses may be settled by appealing to the people by a dissolution and new election of both. Negroes are excluded from politics, except that some can vote by meeting an educational qualification in the province of Cape of Good Hope.¹

Governor-General and Ministry. These parts of the government of South Africa are much the same as have been described for Canada and Australia. The Ministry is responsible to the lower house. The law on the veto by the Governor-General or King is the same as described on page 284 for

¹ Keith, ii., 962; South Africa Act, section 35; Egerton's *Federations and Unions in the British Empire*, 246, n. A few negroes may theoretically but hardly practically vote in Natal, and negroes may theoretically but not practically be elected to the assembly of Cape of Good Hope.

Canada, except that the time limit is one year instead of two.¹

Provincial Governments. The Governor-General (*i. e.* the South African Ministry) appoints an "Administrator" for each of the four provinces who is much more of a real executive than is the provincial Lieutenant-Governor in Canada or the State Governor in Australia. Each province has an elected Assembly, but of much less extensive powers than the similar bodies in the other two confederations, and there is no provincial responsible Ministry.²

Canada, Australia, and South Africa Contrasted. Thus we have in the three great self-governing colonial confederations within the British Empire three widely varying types of federal government. The understanding of the profound and extensive benefits of that system and its wonderful fitness for solving or preventing some of the most serious difficulties involved in governing wide-spreading dominions had not come generally to be so well understood outside the United States at the time of the adoption of the British North America Act of 1867. It is probable too that the framers of the Act, in the somewhat strained relations then existing between England and the United States, were not unmindful of the possibility of Canada's needing at some time

¹ Keith, ii., 966, 1016.

² Keith, ii., 967 *et seq.*

the organization necessary for prompt and vigorous action in defence of British interests against her powerful neighbour to the southwards. Hence Canada was given a powerful, close-knit central government under which the provinces are merely what their name indicates—provinces, though very happy and highly privileged provinces.

In the case of Australia neither of the considerations applied which led in Canada to the central government's being given such predominance. She is removed from the danger of aggression by powerful neighbours. By 1901 the experience of the United States and Switzerland, re-enforced by the success of the federal German Empire since 1871, had exhibited to the world more impressively than ever the possibilities of the federal idea. Moreover that idea had by that time taken powerful hold upon English opinion as offering perhaps a solution of the problem of the unity and permanency of the Empire. Australia therefore presents almost as thoroughgoing an illustration of the true federal state as does its great American prototype. The more independent and dignified position of the Australian "State" is seen in the fact that not the Governor-General, but only the King (*i. e.* the British Ministry), can veto a law passed by a "State" legislature and Governor, while in Canada not only the King (*i. e.* the British Ministry), but the Governor-General

also, has this control over the provincial legislatures.¹ Again, the Governor of an Australian "State" is appointed by the King (*i. e.* the British Ministry), and is his immediate representative, whereas the Governor of a Canadian province is appointed by the Governor-General and represents him rather than the sovereign.

The circumstances of South Africa are quite different from those of the other two, and hence her constitution possesses its own peculiar character. Australia presents strong and vigorous State and federal governments, with the emphasis on the autonomy of the State; Canada presents the same, with, however, a decided emphasis on the central government; and South Africa amounts almost to a supreme central government with the provinces as subdivisions for limited purposes of local legislation. Some authorities consider that it is so highly centralized as hardly to be considered a federation. The reason for this is the necessity of united strength in the face of the racial and other dangers which threaten these provinces.

The consolidated character of the South African government is illustrated too in its judiciary, which is not called upon to draw the delicate and dangerous line between central power and state rights. "The government," says Egerton, "being a union and not

¹ Keith, ii., 1013-16.

a federation, and the powers of Parliament, within certain limitations, being absolute, the Supreme Court will not play the leading part that it does in the great federations; but there will be considerable convenience in the abolition of four independent Supreme Courts, none of which was bound by the decisions of the other."¹ Though no litigant possesses the right of appeal from the South African Supreme Court, the Judicial Committee of the Privy Council may grant in any case special leave of appeal to itself; but this may be limited by act of the South African Parliament, with the condition that such laws must be reserved for the royal approval.

These great republics, Canada and Australia, each about equal in size to the United States, and South Africa eventually to equal more than one third as much, and sure to increase greatly in wealth and population, thus present three vast experiments in varying applications of the federalizing and centralizing principles. The results will be watched by all the world with intense interest in their bearing on some of the most momentous problems of organized government.

OTHER SELF-GOVERNING COLONIES

Newfoundland and New Zealand. So far has the process of confederation gone where the character

¹ Egerton's *Federations and Unions in the British Empire*, 266, n.

of the population and the geographical situation make it practicable that, besides the colonies in confederations described above, we have left of the fully self-governing class only Newfoundland and New Zealand. The latter, on account of its importance, is now ranked as a "Dominion," along with the three great confederations of colonies already described.

It is necessary to say little in addition regarding Newfoundland and New Zealand. The nominal chief executive is the Governor, appointed by the Crown (*i. e.* the Colonial Secretary in the British Ministry), and representing the authority of the British Government and the unity of the Empire. He is generally an Englishman, but practically every other position in a self-governing colony is filled from the inhabitants, either by the people themselves or by some appointing power in the colonial government.¹ The relations between the Governor, the responsible Ministry of the colony, and the colonial legislature are the same as already described for Canada, etc. The Governor, however, is rather freer to refuse his assent to laws than in the great confederations of colonies.

The legislature consists of two houses, one appointed by the Crown from the colonial citizenship and one elected by the people, with the superior power in the latter.

¹ Lowell, ii., 418-19.

Loyalty versus Compulsion. It would be a mistake to suppose that the diminution of control by the mother-country has lessened the bonds of allegiance between herself and this wonderful sisterhood of self-governing countries. On the contrary, the loss of the thirteen American colonies and some later rebellions made it evident that in seeking to exercise too much control the home government, as Benjamin Franklin put it, was following the proper "rules by which a great empire may be reduced to a small one." Loyalty is stronger than compulsion, and the unity of the Empire has increased in proportion as its parts have been allowed to manage their own affairs. The possibility of binding the whole together in some system of central government for affairs of common interest in which the mother-country and colonies shall all participate will be discussed under the subject of imperial federation.¹

¹ See pages 329-34.

CHAPTER XXVIII

CROWN COLONIES

Definition. A Crown colony is one in whose government the power of the King (*i. e.* of the British Ministry), is real and constant through its control over part or all of the colonial officials, instead of being for most purposes little more than a mere advising influence as in the self-governing colonies. The constitution of the Crown colony may be expressed either in a charter or in a set of instructions from the sovereign or in an act of Parliament. It is not this, but the degree of authority exercised by the Crown, that determines its class.

First Group: Largely Self-governing. Though the degree of self-government allowed Crown colonies varies greatly, we may fairly set them off into three groups. First, there are those which are largely self-governing. The Governor, who in colonies of all kinds is appointed by the King, has in these the free use of the veto and other executive powers. The legislature consists of two houses,

the consent of both being necessary for the passage of a law. The upper house is appointed by the King and insists on its co-ordinate rights in law-making. The lower house is elected by the people. It is thus impossible for either element to enforce an unwelcome law over the other. The upper house can defeat any measure hostile to the interests of the Empire at large, and the lower can likewise protect the interests of the inhabitants of that particular colony, though they cannot without the consent of the other house enact laws which are demanded by its needs. This is readily recognized as the form of government in a royal province in America before the Revolution. It remains, now, however, in this pure form only in three instances—Barbados, the Bermudas, and the Bahamas.

Second Group: Crown Rules with People's Co-operation. The second group of Crown colonies consists of those in which the Crown retains full control, but associates with itself representatives of the people whose advice and information are often of great influence. Such a Crown colony has a Governor and a Council with law-making power, a majority of whose members are appointed by the Crown and a minority of whom are elected by the people. These are the colonies in which representative self-government cannot be allowed on account of the ignorance of the population or the military

necessities of the situation. Jamaica has a government of this sort.

Third Group: Government by Crown Alone. The third group of Crown colonies consists of mere military posts like Gibraltar or barbarous regions like Central Africa, in which the prompt exercise of untrammelled authority is necessary. In these the Governor's power is independent of any Council.

The Veto. The Crown, of course, possesses the right of veto over the acts of the legislatures of Crown colonies as over those of self-governing colonies, but with two important differences. First, in a Crown colony the King (*i. e.* the British Ministry) can, in some cases, veto parts of laws without killing the whole law. Second, except in a few cases, the King (*i. e.* the British Ministry) can veto an act of the legislature of a Crown colony at any time, and is not limited to doing so within one or two years, as in the case of the self-governing colonies.¹ This applies, of course, only to new laws; for after the King has once signed a law, it cannot be undone except by a new law repealing the former one.

Difficulties. It seems that the best results are obtained at the two extremes of the colonial system, *i. e.* in the great self-governing colonies and in the Crown colonies which are administered by the Governor and an appointed Council.² In the first there

¹ Keith, ii., 1019-20.

² Lowell, ii., 416.

is no strife, because the Crown recognizes that it can hope to accomplish anything only by reasonable advice, and the legislature of the colony is accordingly not likely to become alarmed, resentful, or quarrelsome. In the colony whose inhabitants have no representation or only a minority upon the legislative Council, the Governor is not likely to become angry or to seek by sudden and violent policies to checkmate opposition, as he is secure against being overridden and hence is the more ready to welcome the reasonable advice of the inhabitants. The conflicts in American colonial history because of the efforts of the royal and popular elements to gain supremacy where governmental power was divided between them are often reproduced now in the colonies which are still under that system. Where either side may hope for victory and yet recognizes that it may be defeated, each will be jealous of the power which it has and always on the alert to seize more.

The Colonial Civil Service. The administrative offices in the self-governing colonies are of course filled by the colonists themselves by the rules which they choose to adopt. In the Crown colonies there are many positions which are filled by men sent out from the British Isles. The time is long past when these places were treated as rewards for politicians or shiftless sons of the nobility, and the colonial

civil service today is organized on the principle of merit. Young men enter the lower ranks by competitive examination and seek by efficiency and character to win the approval of their superiors and the respect of the colonists. The Governors are usually chosen from among the men who have proved their ability in the more responsible colonial positions. Some of the finest examples of English statesmanship have been afforded by the work of such empire builders as Lord Clive in India, Cecil Rhodes in South Africa, and Earl Cromer in Egypt, the first and last named of whom were given their titles for their achievements. The spirit of loyalty to the service is intense, and many a bright young man puts forth his best efforts in emulation of the deeds of these great leaders in the hope perhaps of earning a knighthood or a title of nobility.

CHAPTER XXIX

INDIA—PROTECTORATES

The Indian Empire. India is not legally classed as a colony. It is in fact an empire in itself and is recognized as such by the British government. Hence the title of the English sovereign is King of Great Britain and Ireland and Emperor of India, and his official signature, "George R. & I."—*Rex et Imperator*.¹

Discordant Racial Elements. India is equal in area to almost two thirds of the United States and contains over 315,000,000 people. Though an empire in extent and population, it is not a nation, but on the contrary is a conglomeration of races, languages, and religions which divide it into many distinct and jealous peoples.² It is this absence

¹ The exact legal title of the reigning sovereign is "George V., by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India."

² In 1911 the Indo-European Indians, or Aryans (*i. e.* those whose race is akin to the races of Europe, though mingled in various

of any common race unity or national patriotism which has made it possible for the country to be conquered by a comparatively small number of Englishmen. Though many educated Indians desire independence, or at least self-government on some such plan as enjoyed by Canada, Australia, or South Africa, yet many of them fear that this would lead to control and consequent tyranny by some powerful racial or religious element. These jealousies are so strong that, whatever changes the near future may bring, there is little likelihood of any system in which England will be without the moderating and directing authority.

Degree of Parliamentary Control. Though the British Parliament has legally the same unlimited sovereignty over India as over any other part of the Empire or over England itself, it wisely chooses to leave the government of the great dependency in the hands of experienced men who know from long residence there her peculiar problems and difficulties. Having prescribed the form of government, Parlia-

degrees with that of the dark-skinned aborigines) equalled 232,820,000; the Dravidians (ranging from almost black when pure to light when mixed with Aryans), 62,720,000. The latter are mainly in the south. The Aryans, having pushed in from the north-west, occupy the northern bulk of India.

There were in 1911 217,586,892 Hindus, 66,647,299 Mohammedans, 10,721,453 Buddhists, 10,295,168 Animists, 3,876,203 Christians, 3,014,466 Sikhs, 1,248,182 Jains. Other religious sects are insignificant.—*Statesman's Year Book for 1915*, 128, 131.

ment rarely interferes further than to control the general policy or relations of India toward the rest of the Empire or the outside world. Parliament, says Sir Courtenay Ilbert, not only passes few laws for India, but in legislating for that country uses "wide and general terms, leaving all details and some important matters of principle to be determined by regulations and rules made by the authorities in India."¹

The Secretary of State for India. The immediate agent of communication between Parliament and this great dependency is the Secretary of State for India, who is a member of the Cabinet and so directly responsible to the House of Commons. He resides, of course, in London. He is the supreme authority in the administration of India and can issue such orders as he sees fit, within the bounds of law, to the officials throughout that country. Though he may veto any act of an Indian Legislative Council, he rarely does so.²

The Secretary of State's Council for India. The Secretary is assisted by a Council, consisting of fourteen members appointed by himself, nine of whom must have recently resided at least ten years in India, and two of whom are natives. The expen-

¹ *Journal of Comparative Legislation*, II, 245.

² Rt. Hon. Syed Ameer Ali in *Nineteenth Century and After*, 67, 402.

diture of Indian revenues must receive their approval, and Indian affairs in general are submitted to their discussion, though not control. In matters of peace and war, foreign affairs, relations with native states,¹ and those requiring secrecy and dispatch, the Secretary may act without consulting the Council. The purpose of the latter is thus to supply advice, warning, suggestion, and the supervision of a sort of prudential body of opinion without hampering the freedom and responsibility of administration.

The Viceroy. We may now consider ourselves transferred to the territory of India itself. Over the whole country is an English official, usually a great nobleman, entitled the "Viceroy and Governor-General." He is appointed by the Crown for a term of five years, resides in India, and represents the sovereign. His selection rests, of course, not with the King, but with the Prime Minister. He consults with the Secretary of State for India; but the responsibility for this great appointment is the Premier's. On the accession of a new King in England, the Viceroy celebrates the sovereign's accession as Emperor of India in a magnificent pageant called the *darbar*, similar to the royal coronation in London, in which turbaned sepoys with their flashing arms, bejewelled princes riding on elegantly caparisoned elephants, and all the blaze of oriental colour

¹ For the meaning of "native states," see page 325.

are employed to stir in the people a sense of reverence and pride towards the successor of the Grand Mogul.

King George V and his Queen, themselves, visited India and held the durbar, with excellent results.

The Governor-General in Council. The Viceroy, or, as he is commonly called, the Governor-General, has an Executive Council of eight members besides himself appointed by the Crown (*i. e.* by the Secretary of State for India), one of whom is a native. Subject to the ultimate authority of the British Government, supreme executive power over all India rests with "The Governor-General in Council." He may veto the acts of the Central Legislative Council¹ or of any Provincial Legislative Council,² and important laws or expenditures of the latter must receive his approval. Although he usually acts in accord with the advice of his Executive Council, he can disregard them and follow his own opinion. The responsibility assumed by a Governor-General, in India for only a few years even if reappointed after his five-year term, who chooses thus to act on his own opinions in defiance of those who have grown old in the service, is so overwhelming that only a man of great courage or great rashness will assume it. Yet it is the Governor-Generals who know how and dare to use their personal authority in proper measure who accomplish reforms and

¹ See page 314.

² See page 317.

leave their marks on Indian progress. But it is also true that they frequently confer their great benefits upon the ignorant and prejudiced masses of the Indian people at the peril of serious discontent at the change of ancient custom.

The fact that a great deal that falls into the control of the Legislature at home is assigned to the executive in India makes the Governor-General's power for good or evil immense, and raises his office to a position of almost unexampled responsibility.

The Legislative Council of India. Law-making power for this vast empire rests with a Legislative Council consisting of sixty-eight members.¹ Twenty-five are elected directly or indirectly by the natives. The others consist of the eight Executive Councillors and in addition thirty-five members appointed by the Governor-General in such a way as to secure representation for the various interests and classes of the population. Twenty-eight of the latter must be officials. These, added to the eight Executive Councillors, give the officials a majority of four; so that in the last resort the English element by acting together can exercise control.

The Governor-General may forbid the candidature

¹ The Rt. Hon. Syed Ameer Ali, in *The Nineteenth Century and After*, 67, 401, n., says "68, inclusive of the Viceroy." But Sir Courtenay Ilbert's statement (*Journal of the Society of Comparative Legislation*, II, 246), that there are 68 exclusive of the Viceroy, seems clearly correct.

among the elected members of any one whom he considers dangerous to the Imperial interests. Notwithstanding this and the limitations described in the next section, the Legislative Council is a most valuable means of bringing native aspirations and the views of different minds, English and native, to bear upon the shaping of the laws.

The Powers of the Legislative Council of India, though far in advance of what Indians have ever enjoyed, are quite limited. They consist of three functions, (a) legislative, (b) deliberative, and (c) interrogatory.

(a) The Legislative Council possesses really no initiative in law-making, but may simply adopt or reject laws that are proposed to it by the Governor-General or members of his Council. Many matters, moreover, are subject to determination by the executive without consultation with the Legislative Council.

(b) The deliberative functions are concerned, first with the budget.¹ The estimate of expenditures and necessary taxes to meet them is presented by the member of the Executive Council in charge of finance. The provisions for the army, interest on the public debt, government railways, and a few other services of supreme necessity cannot be discussed. With these exceptions, any member may

¹ For definition of the budget, see pages 63 and 142.

debate and may make any motion he chooses on any item of the budget. The votes of the Council are merely advice, which the executive may either accept or reject.

The second deliberative function of the Legislative Council consists of the right to debate and vote upon resolutions offered by any member upon any subject of public interest, with a few exceptions, as, *e. g.*, relations with foreign countries and native states.¹ The vote of the Council is merely advice to the executive, which may be ignored or may be accepted as the basis for a bill to be presented to the Council for enactment into law.

(c) The interrogatory right permits any member of the Legislative Council to put any respectful question to the officials at the head of the various executive departments.

The Provinces. Only 61 per cent. of the territory containing 78 per cent. of the population of the Indian Empire is under direct British administration. The rest, though under British sovereignty, is ruled by native princes.² The two thirds ruled directly by England is divided into fifteen provinces. Over each of the seven leading provinces there is a Governor or Lieutenant-Governor, and over the eight lesser ones a Chief Commissioner.³ The

¹ For definition of native states, see page 325.

² See pages 325-6.

³ Bombay, Bengal, and Madras are called Presidencies. Their

government of the seven principal provinces allows a considerable representation of native opinion, as will be presently described. The lesser provinces lie among the less developed regions of the Empire and are governed by their Chief Commissioner or the Governor General and his Executive and Legislative Councils without the participation of their inhabitants in law-making.

Councils in the Provinces. In the seven leading provinces, the Governor or Lieutenant-Governor is assisted by a small Executive Council including one native; and local law-making is entrusted, to a certain extent, to Legislative Councils, over a third of whose members are elected and a clear majority of whose members are non-office-holding natives.¹ The appointed members are named by the chief executive of the province, who may also forbid the candidature of an elective representative whom he considers dangerous.

The procedure of the Provincial Councils regarding the budget, proposed laws, etc., is similar to that of the Central Legislative Council.²

The functions of the Provincial Governors and their Councils are so extensive and important, that,

executive is styled Governor and is appointed by the Crown. The executives of the other provinces are appointed by the Governor-General.

¹ *North American Review*, 192, 373.

² See page 315.

it is reliably stated, "good or bad administration in India depends to a greater extent upon the provincial government than on the authorities in Calcutta or London."¹

The Suffrage. Indian society is so cut up into hostile racial and religious factions that it is considered impracticable to apportion representation on the basis merely of population as in many western countries. Accordingly, the members of the Central and Provincial Legislative Councils are elected to represent classes and interests, as, *e. g.*, the Moham-medans, the merchants, the farmers, etc. The qualifications for voting are complex and are based upon honours, higher education, or the ownership of property. The people in some cases elect the Councillor directly, and in others choose electors, who in turn elect the Councillor. The term is three years.²

Reserved Power of the Executive. The Governor or Lieutenant-Governor (as the case may be) of the province has a veto on the acts of the Legislative Council; and if that body fails to enact measures, that he considers necessary, he may appeal to the Legislative Council for India to enact the desired law. The Viceroy and the British Government in

¹ *Political Science Quarterly*, xxvi., 305. Calcutta was until recently the capital of India; but Delhi, the ancient Mogul capital, has again been made the seat of government.

² *Journal of the Society of Comparative Legislation*, II, 248-51.

London also may veto any act of a provincial legislature. In further limitation, the provincial legislature is forbidden to deal with certain subjects, the handling of which might lead to dangerous consequences. The presiding officer in the Legislative Councils possesses wide authority to rule out of order any question or resolution without assigning his reasons. The government of India is, in fact, as has been well said, "a compromise between conflicting principles—the absolutism of the Mogul emperors and the democratic ideal of the House of Commons. These are the sources of the British sovereignty in India, and certain necessary consequences flow from them."¹ But despite these restrictions, the government of India is now administered in closer touch with native opinion than ever before.

Effects of Increased Native Power. The increased participation of natives in the directing authority of the government was enacted by Parliament in 1909 under the leadership of Secretary of State for India Lord Morley and Viceroy Lord Minto, against violent criticism. This was the answer of the British Government to the demands of the "Indian National Congress"² and the widespread popular discontent

¹ *Blackwood's Magazine*, 188, 706.

² The Indian National Congress is a convention of entirely unofficial character which has met annually from city to city since 1885. Its proceedings are in English, as the common language

during recent years. Only a small educated class in India cares for political power or is prepared to exercise it; and a part of that class is fully as selfish as patriotic in its aims. Already the English members have had to protect the interests of the vast mass of small farmers against the grasping class policy of the native landlords and lawyers in the Legislative Councils, though in general the native members have co-operated cordially with the English official members in the tasks of government.¹

On account of the bitter rivalry between the Hindus and Mohammedans and the further sharp division into castes, with the consequent absence of the feeling of community interest, the cultivation of the proper spirit for popular self-government is more difficult in India than in any other civilized country in the world; and it is not by any means certain that either the justice or efficiency of the government would for many years to come be increased by enlarging any further the element of native control.

The District. The province is divided into districts, containing on an average almost a million

of the educated native classes, whose aspirations for self-government it voices. The "Moderates" desire a system similar to that of Canada, Australia, or South Africa; the "Extremists" demand absolute independence.

¹ *Political Science Quarterly*, 26, 310; *Blackwood's Magazine*, 188, 711.

people. Over the district is an English official who is the responsible arm of the provincial government in the execution of all its powers, except the judiciary. It is this group of some two hundred and fifty men who are the actual executors of the vastest system of paternal government that the world has ever seen, and whose fidelity and efficiency are the basis for ex-President Roosevelt's remark that "The successful administration of the Indian Empire by the English has been one of the most notable and admirable achievements of the white race during the last two centuries."

Municipal and Rural Self-Government. In the administration of local affairs the English are employing more and more the services of the natives. In over seven hundred cities¹ there are municipal councils called Committees. In many of the smaller places and all the larger, the majority of the Committee are elected by the taxpayers. In all places a majority of the members, and in many places all, are natives. They "have the care of the lighting of the roads, water supply, drainage, sanitation, medical relief, vaccination, and education, particularly primary education; they impose taxes, enact by-laws, make improvements, and spend money."²

¹ Having a population aggregating about 17,000,000.—*Statesman's Year Book*, for 1915, 123; Lord Curzon in *North American Review*, cxcii., 154.

² *Statesman's Year Book* for 1915, 123.

All these functions are performed under the supervision of the provincial government, which possesses the right of veto.

The same system exists also to a considerable extent for rural affairs.¹

The Indian Civil Service. The officers of the Indian civil service are selected by competitive examination and promoted according to efficiency and loyalty. Almost all the higher positions are filled by men from the British Isles, though there is a steady tendency to give more and more positions of responsibility to Indians. Two considerations with reference to the appointment of natives must always be held in mind—the necessity of keeping the administration loyal to the Crown and the lack of governing ability among most of the native races. Natives are found, however, in the highest courts and Executive and Legislative Councils. Most of the lower and all of the lowest positions are filled by Indians, so that the government of this vast empire is in the hands of about twelve hundred higher and six or eight thousand lower English officials and a million and a half natives.²

¹ *Statesman's Year Book for 1915*, 123.

² Lowell, ii., 422. Lord Curzon says that he has seen the statement that the government employees of all grades in India (not including the army) include 1,500,000 natives and 10,000 Europeans. (*North American Review*, vol. cxc., p. 156; August, 1910.) *The Cyclopædia Britannica*, xiv., 386, and other authorities, indicate

Law and Judiciary. The teeming millions of India have received the inestimable blessing of England's just, humane, and uniform system of criminal law. By some of the ablest judicial minds the criminal law has been systematized into a code, which is made the clearer by illustrations of actual cases briefly stated under each section. The code is drawn in part from Indian and Roman law, but is fundamentally English law simplified and adapted to Indian conditions.¹

In civil law the situation is somewhat different. It is necessary to regard in the relationships of life, business transactions, etc., the habits to which a people have long been accustomed. Hence, "for many civil purposes the law of race, religion, and caste governs."²

The English jury system has been introduced in a modified form in criminal trials. There is no grand jury, and the trial jury consists of three, five, seven, or nine members according to the gravity of the case and the grade of the court. A verdict is rendered by a majority. The right of appeal is much more extensive than in England itself,³ due doubtless to the lack of confidence in the lower native courts. The higher courts even review the decisions

that 6,500 would be nearer the total number of Europeans. Cf. *N. A. R.*, cxcii., p. 374.

¹ *Cyclopædia Britannica*, vii., 463.

² *Ib.*

³ *Ib.*, vii., 464.

of the lower courts without appeal being made, in order to correct injustice. The government retains extensive power of banishment or imprisonment without trial in emergencies.

The jury is never employed in civil cases in India.¹

India has a body of well-educated and well-paid judges. Indians hold the great majority of the lower and many of the higher judgeships, and some are found even in the highest courts. In the great provinces having the more liberal forms of government, final appeal lies to the Judicial Committee of the Privy Council in London.

The Army. The government of India keeps a standing army of about 230,000 men, two thirds being natives and one third British, with the purpose of preventing insurrections, wars between native princes, and conquest by foreign powers. They are all supported out of the Indian taxes, as are all civil officials of the Indian government. When on service outside India, they are paid by the British treasury.

The government maintains about 100,000 troops besides these for police purposes, etc. The princes of the native states keep armies aggregating about 100,000 men, organized and officered as they see fit. The British Government has nothing to do

¹ Ilbert's *Government of India*, and *Imperial Gazetteer of India*, iv., on juries.

with these troops further than to limit their number, etc., as they think proper.

Native States. What has been said so far describes the government of that portion of India which is under the direct control of the English. Almost a fourth of the population¹ is still under the government of native princes. The agencies for the improvement of the condition of the people and the rudiments of self-government which have been introduced by the British in their territories have been set up by some of the more progressive native rulers in their states, while in others the ancient personal authority of the sovereign remains unmodified by popular elements. The Gaekwar of Baroda, *e. g.*, a state of almost two and a half million inhabitants, has adopted progressive western methods with such success as to be regarded with the greatest pride by the party of Indian self-government, who proclaim Baroda as "regarded all over India as a model state."²

Such serious discontent was caused by the abolition of the native dynasties that their dethronement by conquest and the annexation of their possessions directly to the British Crown has long ago been

¹ Thirty-nine per cent. of the territory and twenty-two per cent. of the population.

² See account by Saint Nihal Singh in the *North American Review* for September, 1911; xcii., 376.

abandoned. There are almost seven hundred of these native states, varying in size from eighty-two thousand square miles with thirteen and a third million people down to little areas hardly bigger than a large plantation.¹

The British Resident. The native prince is by no means free to govern as he pleases; for at his court there is a British Resident, whose advice he is virtually obliged to follow. The English King as Emperor of India is the prince's immediate overlord, something as the King of mediæval France, *e. g.*, was the overlord of the Duke of Burgundy, and may interfere in any way that he sees fit to protect either his own interests or those of the prince's subjects. The British did not create this feudal relation, but found it in a state of decay and restored it in its full vigour when the King as Emperor of India assumed the duties of the deposed Grand Mogul.

Bad government brings a warning; and if the prince proves permanently stubborn or incapable, he is deposed and his place filled by some proper relative.² British control over such public works as railways and telegraphs extends throughout the native states the same as through other parts of India, and Europeans can be tried only before an English court.

The native states thus cannot be called colonies

¹ Lowell, ii., 425; *Statesman's Year Book for 1915*, 125.

² *Ib.*, ii., 425-6.

so much as protectorates, or dependencies. They are protected both against invasion by enemies and rebellion by their subjects, but are dependent upon the British Government.

Egypt. After exercising an authority amounting to sovereignty for over thirty years, England, in 1914, in consequence of the Khedive's joining his nominal overlord, Turkey, in declaring war against England, deposed the Khedive, put his uncle on the throne with the more exalted title of Sultan, and declared the country annexed to the British Empire as a protectorate. England had fortunately the very year previous set up a very liberal degree of self-government for an oriental country, and hence the dangers to British rule were there, as in India and South Africa, forestalled by the just and reasonable recognition which had been given to national aspirations.

The Sultan and the Lord High Commissioner. The Sultan has as chief adviser an Englishman known as the Lord High Commissioner. Though the Sultan is treated with great respect, and though his consent is necessary to acts of government, he has slight freedom in resisting the determination of his British adviser.

The Ministry. The executive departments are in charge of seven native Ministers; but each has an English adviser whose opinion carries great weight,

and over them all is the British Lord High Commissioner. Englishmen fill so many of the higher administrative positions as to cause serious discontent among ambitious educated Egyptians.

The Legislative Assembly. This body, dating in its present enlarged form from 1913, affords the natives an ample opportunity to express their desires, and a strong means of inducing the government to enact them into law. The Assembly consists of ninety members. Of these the ministers and certain members appointed to represent different classes constitute twenty-four. The other sixty-six are chosen by the people through electoral colleges.

No new tax can be imposed without the consent of the Assembly. If the executive cannot convince the Assembly of the need of a law which it desires, it can, after full discussion, enact it without their consent. The executive also has the power of absolute veto upon any bill passed by the Assembly. The latter, however, possesses the right of compelling the government to veto any proposal three times before it is considered disposed of for that occasion. It is thus made unpleasant and even unsafe persistently to disregard the desires of the inhabitants.

A Local Legislature is elected by the people in each province. It has authority to pass ordinances on certain local affairs, particularly markets, vil-

lages, elementary education, and the pay of local police.¹

Effects of English Rule. England feels that she must remain in Egypt to insure her route to India; but, in accord with the enlightened policy on which she has learned to rule her Empire, she has made good her position by a series of economic, engineering, sanitary, and political improvements and safeguards for the small farmer which have given Egypt a prosperity beyond anything which the people have ever known.

The Future of the Empire. What will be the fate of England's far-spreading and heterogeneous Empire as its various constituent nations of non-English blood come to national consciousness, intelligence, and wealth, only the future can tell. If all the colonies were of English stock and traditions, the problem would still be one demanding the highest talent for government; but to devise a plan of holding together permanently vast nations scattered over the whole face of the globe, differing in race, religion, traditions, ideals, and degree of civilization as widely as they do in geographical position, would constitute a triumph of constructive statesmanship beyond anything history has yet witnessed.

While giving these peoples the benefit of those

¹ *Statesman's Year Book for 1913*, 1325.

elements in English civilization that appear suitable to their needs and temperaments, England studiously refrains from the policy which has made foreign domination so hateful to several subject peoples on the continent of Europe—the policy of seeking to force upon them a civilization not their own.

The bond of union must be the realization of a common interest, ennobled with a sense of a common patriotism. That the non-English races are coming to share this spirit is testified by many such expressions as that of a noted Indian in picturing the effects of British rule upon his country:

Unmindful of their ancient name
And lost to Honour, Glory, Fame,
And sunk in strife
Thou found'st them, whom thy touch has made
Men, to whom thy breath conveyed
A nobler life.¹

Except by giving life itself, as many Indians have done, no more eloquent or significant expression of this same sentiment could be given than the following cry of devotion to "the mother-country" by a native Indian newspaper on the outbreak of the Great War, in 1914:

Behind the serried ranks of one of the finest armies in the world, there stand the multitudinous peoples of

¹ Nawab Nizamut Jung, High Court Judge of Hyderabad.

India, ready to co-operate with the Government in the defence of the Empire, which, for them, means, in its ultimate evolution, the complete recognition of their rights as citizens of the freest State in the world. We may have our differences with the Government—and what people have not?—but in the presence of a common enemy, be it Germany or any other Power, we sink our differences, we forget our little quarrels, and close our ranks, and offer all that we possess in defence of the great Empire, to which we are all so proud to belong and with which the future prosperity and advancement of our people are bound up.¹

Not only an affection that instinctively speaks of England as “the motherland,” but a clear understanding of what the British connection means for India, appears in the following extract from another native newspaper:

India's fortunes are indissolubly linked up with those of England. As Lord Curzon rightly said, India cannot do without England, and England would be impotent without India. It is not implied that the mother-country has not enough men to fight the battles, or that it cannot unaided crush Germany! But the Indians and the Europeans in this country owe it to themselves to don the armour in defence of the Empire, to defend India, and, if need be, to go to any other part of the world at the call of the motherland.²

With due moderation, strength, and wisdom, the

¹ *The Bengalee*, Calcutta.

² *The Beharee*, of Bankipore.

Empire may go far to teach the world a peaceful federation of mankind; for if such a vast proportion of the race can live at harmony with itself, why cannot a still larger portion?

Imperial Conferences. The staggering weight of the imperial problem, together with ideas of an individualistic philosophy, led a large part of the English people a few decades ago to anticipate with composure the ultimate dissolution of the Empire into independent nations. Such views are now held by practically nobody, and the leaders of politics took up some years ago with the enthusiasm of a great ideal the task of binding the Empire into closer material and spiritual union. In pursuance of this there have been several conferences in London between representatives of the mother-country and the self-governing colonies, and it is now arranged that these shall occur every four years. The mother-country will be represented by the Premier and the Colonial Secretary, and the colonies by their Premiers and other delegates. Steps have been taken for the representation of India at future conferences, in recognition of her splendid loyalty and service in the Great War. These imperial conferences have no law-making authority. They indicate a spirit of closer union, however, as does the fact that several of the self-governing colonies, even before the Great War, began granting slightly lower tariff

rates to products from the British Isles than to those from other countries.¹

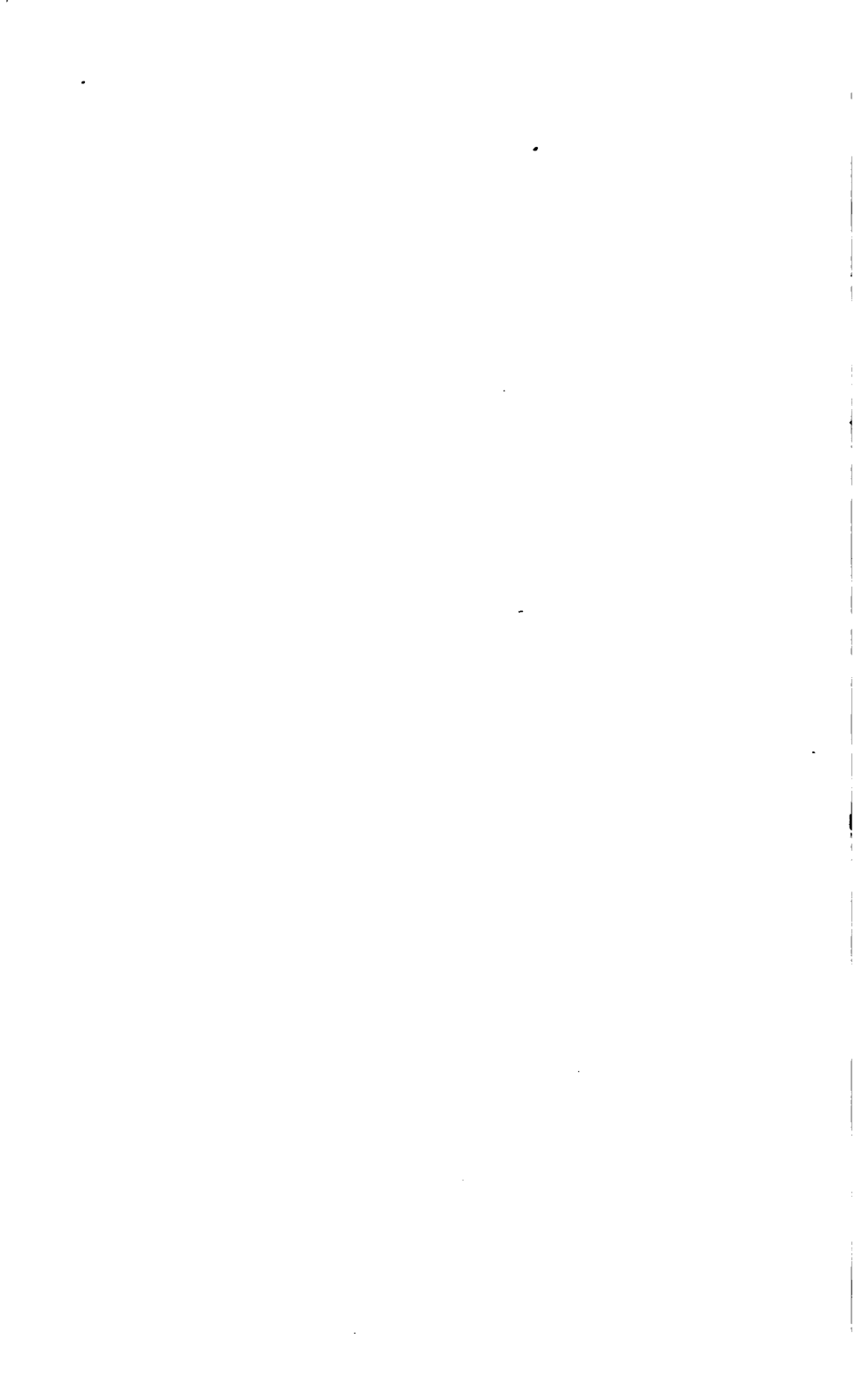
Imperial Federation. Any form of world-wide federal government for the Empire including possessions inhabited by non-European stocks seems far beyond the possibilities of the present. Even a federation of the mother-country and the great white man colonies in an imperial legislature to make laws on matters of common interest, such as war, navy, foreign affairs, and commercial relations between parts of the Empire and with the outside world, presents difficulties greater than have ever confronted the framers of a successful confederacy. But in the crucible of a common agony and peril things have come to light that could not be discovered by the cold speculations of current politics. The Great War revealed to an astonished world how powerful and how nearly universal is the love of the Empire, its ideals and blessings, when at the cry of the mother the men of the lion line from over land and sea came and kept coming to seal their devotion with their lives. Since history has been written the world had never witnessed such a sublime expression of uncompelled devotion among so many different kinds of men and countries to a motherland whom they loved for what she was and what she had done for them and for all mankind.

¹ Lowell, ii., 435-8.

The meaning of this is too plain to be overlooked; but what changes it will produce in the organic structure of the Empire can only be conjectured. Some expect early a common council of mother-country and colonies with authority over such matters as army, navy, peace, war, international and intra-imperial relations, tariffs, etc. But some of the wisest and most experienced empire builders perceive so many difficulties in the way of any formal imperial constitution that they expect the organization of the past, to any considerable extent, for a long time yet to be modified in spirit rather than mechanism.

BOOK IV

Social and Political Characteristics



BOOK IV. SOCIAL AND POLITICAL CHARACTERISTICS

CHAPTER XXX

THE ESTABLISHED CHURCH

Origin of Union of Church and State. Like many other European countries, England has an "established church," *i. e.* one particular denomination which enjoys a peculiar and privileged position. This system originated in the Middle Ages when practically all the inhabitants of one country were of the same religion, and it was considered that a person must belong to the church as it is now that he must be a citizen of the state, whether he cares to or not. A natural conclusion was that the expenses of religion should be supported by taxation, either by the state itself or by church officials backed by the power of the state. With the division of people among different creeds in the modern world, this system has become impossible; although it took centuries of bloody warfare and fruitless persecution

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to convince mankind that the only way to secure peace is to allow every person to belong to any church he pleases or to none at all. Although they realize this in England as fully as in this country, still some remnants of the old system remain and are among the most productive causes of strife and ill-feeling.

The established church, called the Church of England, bears the name of Protestant Episcopal and corresponds to the denomination known in the United States by the same title; and though it enjoys many special advantages, its privileges are by no means what they once were.

Support of the Church. In the Middle Ages vast tracts of land were donated to the church. Many of these it still holds and of course draws their income. Also in those distant times it was the law that a tenth of the products from the land should be paid to the church. Though the right to collect these tithes was at the time of the Reformation in many cases taken by the government from the church and sold or given as a favour to laymen, mere private persons, the church still retains from this source an annual income equal to perhaps fifteen or twenty million dollars.¹ The voluntary contribu-

¹ Lowell, ii., 375. The voluntary contributions to the Church of England amounted for the year 1913-14 to £8,207,000 or \$39,924,262.—*Statesman's Year Book for 1915*, 26.

tions of its members, though more than twice that amount, are nevertheless made much less burdensome than must be the case in other churches.

The Tithes. The tithes are not strictly a tax today upon the landowners, though they are, of course, a portion of the national income appropriated to the benefit of one particular part of the community. When the tithes were first imposed they were in full effect a tax on the landlords at that time. They do not now constitute a burden on the landowners; for when they or their ancestors bought their lands, they got them at a price less in amount in proportion to the amount of the tithes, and hence received as good a return on their investment as they would have received on a larger sum if they had had to pay a higher price on account of the land's being free from tithes. To abolish tithes today would amount to a stupendous gift to the landholders. Therefore, even though the Church of England should be disestablished, *i. e.* deprived of its special privileges and required to live, like other churches, by the voluntary contributions of its members, the tithes would not be abolished; but, being in the nature of a charge for public purposes, they would be appropriated by the government for the support of education, charity, or other general benefits for the nation at large.

Thus, though in a sense the established church

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lays no burden of tax on the people, it does enjoy a vast income contributed by the nation at large, and hence possesses a special privilege out of harmony with the principles of justice and modern democratic equality before the law. This unfairness is diminished, but not entirely relieved, by the fact that the larger part of the lands from which the tithes are derived are owned by members of the established church.¹

The last privilege of the church to lay a special tax on the people in addition to the tithe was abolished in 1868, and it has been almost a hundred years since Parliament appropriated money for its assistance.

The King the Head of the Church. One result of the Reformation in England was to make the King by act of Parliament Supreme Head on Earth of the established church. Until modern times this conferred upon the sovereign some of his most important powers and lodged in his hands momentous opportunities for good or evil. Though the personal authority of the King in this as in other matters is gone, and the modern principle of keeping religion and politics apart has deprived the legal union of

¹ Though the tithes are sometimes collected from the landlord and sometimes from the tenant, they are theoretically deducted from the income of the landlord, as otherwise his rents would be higher. We cannot enter upon the complicated subject of the shifting of the burden between the landlord and the tenant.

church and state of much of its former significance, we shall perceive in the following paragraphs that there still remain certain important effects.

Government Control. As strange and unpermissible as such a thing may seem to an American, the organization of the established church, and even its creed and religious ceremonies, are prescribed by act of Parliament. Though these are not now subjects of political controversy, a Parliament composed of a majority of men of a hostile religion could legally force upon it a creed denying every article of Christian belief. Any serious interference with religion would, however, put an end to the union of church and state; for a powerful faction within "the establishment" itself jealously resents any control by the state; and though the people of modern England tolerate the remnants of the ancient system, they would not endure any attempt to revive its activity.

Bishops and Dioceses. For purposes of church government, England is divided into two provinces, Canterbury in the south and York in the north, the former being much the larger. Each province is divided into a number of dioceses, there being thirty-six.¹ Over each diocese there is a bishop, and

¹ The Welsh Disestablishment Act of 1914, by putting the Episcopal Church in Wales on the same basis as other churches reduced the number of bishoprics in the "established church" from 40 to 36.

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over each of the two provinces there is an archbishop. There are also suffragan (*i. e.* assistant) bishops, about equal in number to the bishops, each having charge of a particular part of the diocese of the bishop whom he assists.

The authority of the bishop is confined to his own diocese. The archbishop has a diocese of his own, in which he performs all the ordinary duties of a bishop; but he also possesses in addition certain rights of leadership and supervision over all the dioceses of his province. Neither archbishop can interfere in the province of the other; though the Archbishop of Canterbury, as "Primate of all England," is considered the head of the church under the King and enjoys the distinction of crowning the sovereign and taking precedence on all official occasions of every person in the realm after princes of the royal blood.

Convocation. Every year the King as legal head of the church orders the archbishops respectively to summon the ancient representative legislative body of each of the two provinces, called Convocation. One of the most important consequences of the union of church and state is that Convocation can neither meet nor deliberate without the express permission of the King, and that its resolutions

The four Episcopal dioceses and bishops in Wales continue their religious duties as before.

have no binding force without the royal sanction. Their meetings are ordinarily simply for consultation, and only on rare occasions are they allowed to discuss church legislation.

Convocation consists of two houses. The upper is made up of the bishops, presided over by the archbishop. The lower consists of the suffragan bishops, certain higher clergy called archdeacons and deans, and of representatives of the parish pastors and cathedral chapters elected at the same time that parliamentary elections occur.¹ In the province of Canterbury the parish pastors in each diocese elect two representatives called proctors, and each cathedral chapter elects one proctor. A cathedral chapter consists of four (in a few instances five or six) eminent clergymen who form a sort of council to the bishop and have duties connected with the cathedral, *i. e.* the bishop's church, of the diocese. The rule in the province of York is the same, except that the parish clergy there elect two proctors for each archdeaconry. The lower house consists of about 160 members in Canterbury and about 80 in York. It is evident

¹ For suffragan bishops, see page 342.

The bishop's assistant, known as the dean, is next in rank below the bishop. There is ordinarily one for each diocese. Some dioceses are divided into two and some into four archdeaconries, and over each is an archdeacon with extensive powers in carrying out the authority of the bishop. In 1913 there were about thirty-two deans and one hundred archdeacons in England.

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that the system is very undemocratic, as the representatives of the thousands of parish pastors are outnumbered by the upper ranks of the clergy who are members of the lower house.

The House of Laymen. Of late years there has been created in both the provinces of Canterbury and York an extra-legal body called the House of Laymen, with the object of obtaining their view-point and co-operation in the work of the church. It consists of delegates chosen by elected representatives of the laymen of the church. They have, of course, no authority in church government.

The Representative Church Assembly. The convocations of Canterbury and York are entirely independent of each other; but a means has been devised for bringing together a body which may express the aspirations and counsels of the entire body of the established church. This is the Representative Church Assembly. It consists of the Convocations and the Houses of Laymen of both provinces all meeting as one body. Though entirely outside the legal constitution of the church, and enjoying no function except consultation, the Assembly has proved of great value in stimulating religion and unifying the church.

Appointment of Bishops. The archbishops, bishops, and suffragan bishops of the established church are appointed by the Prime Minister acting

in the name of the King. It is not surprising that the bishops, though always men of upright character, are sometimes of a religious tendency quite different from what the church itself would have endorsed. No sovereign or Minister would now tyrannically threaten one of these "chief pastors," as Queen Elizabeth is said to have done by saying: "Proud prelate, remember what you were before I made you what you are. Unless you comply with my demand, by God, I will unfrock you." None the less, the bishops and archbishops of this great spiritual body still stand in the same legal subjection to the political head of the country.

Bishops in Parliament. The membership of twenty-six bishops¹ in Parliament has already been described. This virtually gives double representation to the Episcopal interest and the Conservative party, and hence has been strongly opposed by other bodies, but it has lost much of its importance with the abolition of the veto power in the House of Lords.

Powers of the Bishops. Only a bishop can ordain a clergyman of the established church. The bishops appoint many of the pastors of churches; but a majority of these are appointed by laymen whose predecessors in ownership of certain lands or endowments hundreds of years ago obtained this right by founding the church, or in some other way;

¹ See pages 82-3, and 83, n.

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and many more are named by the Lord Chancellor as the representative of the King.¹ The congregation itself never has the right to choose its own pastor. The bishop of the diocese, however, has the right to reject any appointee (or more correctly nominee) on the ground of bad character, but not because of unfitness for the particular position.

Irregularity of life or teaching in a clergyman of the established church will incur an investigation by his bishop and trial either by him or a government court of laymen. The final appeal in all cases, either of morals or doctrine, lies to the Judicial Committee of the Privy Council—a body composed of laymen forming, we will recall,² a part of the appellate court system of the kingdom and Empire. Nominally, of course, the final authority rests with the King as Supreme Head of the Church. The Judicial Committee of the Privy Council are simply the men to whom, in the process of depriving the sovereign of authority, this particular power has fallen.

Theoretical Difficulties *versus* Practical Success.

The system would break down entirely if the government should fall into the hands of a hostile denomination or of a party opposed to the Christian religion;

¹ *The Statesman's Year Book for 1915*, page 26, states that private persons appoint the pastors of about 8500 of the 14,387 parishes in England and Wales.

² See above, page 202.

but as it is, like many other English customs that appear absurd to an outsider, it works better than might be expected. If we point out all the terrible things that a mere majority in Parliament might do either in religion or politics, the Englishman may reply that, despite the guarantees with which we surround our property and liberties in our written constitutions, the majority of the people, or at most a two-thirds majority—and in times of revolution fractions are not carefully considered—can at any time destroy both the constitution and what it is supposed to protect. The truth is that in both cases private rights and public welfare depend upon the virtue and intelligence of the people; and when these are present, the particular form of government is of secondary importance, though doubtless different forms serve best in different circumstances. If virtue and intelligence disappear, constitutions both written and unwritten will soon follow.

The Future of the Establishment. Probably a majority of Englishmen, like practically all Americans, think that the cause of true religion and morality would be benefited by the complete separation of the church from the government. Disestablishment is strongly urged by a growing body of people, and as the Episcopalians now only slightly outnumber the Dissenters, though still considerably more numerous than the Roman Catholics, probably not

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many decades will pass before at least a partial abolition of the special privileges of this one denomination.¹

The church was disestablished in Wales in 1914.

Scotland and Ireland. In Scotland the Presbyterian is the established church; but there is no appointment of ministers by laymen and there are of course no bishops. The congregations choose their own pastors. Almost a hundred years ago the Scotch Church split because many of the members were opposed to the "lay patronage," *i. e.* the appointment of the minister by some layman, as described above on page 345; and although lay patronage has long been abolished in the Scottish Church, the small seceding factions have never reunited with the establishment.

In Ireland there is now no established church, though the Episcopal Church still retains much of its former income-producing property.²

¹ In 1914 the Church of England in England and Wales numbered 2,445,114; other Protestant bodies ("Dissenters"), 2,134,655; the Roman Catholics (estimated) 1,900,000, including unconfirmed children presumably.—*Statesman's Year Book for 1915*, 27.

² About three fourths of the inhabitants of Ireland are Roman Catholics; 13 per cent. are Episcopalians and about 10 per cent. are Presbyterians. Other denominations are small. The Protestants are mainly in the north.—*Statesman's Year Book for 1915*, 28.

CHAPTER XXXI

EDUCATION

Education and the Modern State. Every progressive government recognizes the necessity of its citizens' possessing at least an elementary education, as it is impossible for an ignorant people either to govern itself properly or to succeed in industrial competition with the educated nations of the world. England has not gone so far as several other nations in providing adequate education for all her people, and yet she has done much.

'We may divide English schools into three grades—elementary, grammar school, and higher institutions. The means of support are public taxation, tuition fees, and the income from endowments.

Elementary Schools. First, there are the elementary schools. Some of these are supported entirely by taxation and are therefore called "provided schools," *i. e.* they are provided by the government.'

* These were formerly called board schools, because they were under the control of boards of trustees before the institution of the present system of control by the borough and county councils.

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Other elementary schools are the property of religious denominations and are called unprovided, or voluntary schools. They are supported in part by the contributions of their friends and in part by funds from the government. Education in practically all elementary schools, both provided and voluntary, is free. The provided schools are attended mainly by the children of the working classes. It is hardly necessary to say that there are in addition expensive private schools for the class of the population who care to pay for such instruction.

Compulsory Education. Every parent is required by law to send his children of proper age to some elementary school. Above the elementary school, however, education is neither free nor compulsory; though there are in the higher schools scholarships which are awarded to the children of the poorer classes for excellent work in the elementary school.

Public Supervision. Control by public officials is absolute over the provided schools and very extensive over the voluntary, with the object of maintaining standards throughout the country.

Secondary Schools. Next in order come the grammar schools and the great "public schools," which answer respectively to the American "high school" and the grades just below, and to the college preparatory schools. Let us first dispose of the latter. The term "public school" has for genera-

tions been used in England to describe the celebrated institutions for preparing boys for the universities, such as Eton, Harrow, etc. They are supported by large endowments and the fees of their patrons, and are "public" only in the sense that any one who chooses to pay the fees and the cost of the rather expensive social life may enter. They are, of course, patronized principally by the well-to-do and aristocratic classes.

The grammar schools are supported in part by endowments, in part by tuition fees, and in part by public taxation. They are attended mainly by the children of the middle class, as the children of the poor rarely go beyond the elementary schools.

Universities. The ancient universities of Oxford and Cambridge, supported by their liberal endowments and fees, are still patronized mainly by the wealthy and aristocratic. The opportunities of forming influential friendships and the bearing of the popular and practiced man of the world make them the favourite resorts for young men contemplating a public career.

A number of the great cities of the country now maintain large universities with magnificent buildings and equipment where the middle and labouring classes can obtain at moderate cost thorough general, technical, or professional education.

The Religious Question. The proper correlation

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of the school and religion has always been a vexed question where large elements of the population differ in religious belief. In America we leave religious education out of the public schools, which, though necessary, is recognized as no solution of the essential question at stake—the religious and moral training of the rising generation.

England follows the opposite plan, of supplying religious instruction in the schools, but experiences grave difficulties in its operation. The trouble arises largely from the fact that most of the voluntary schools are owned by the established church and the religious instruction therefore is by Episcopalians and is in accord with their creed. The law attempts to meet this difficulty by requiring that the religious exercises may take place only at the opening or closing of school, and that no child may be compelled to be present at them. Other denominations object violently to paying taxes to support religious instruction of which they do not approve, even though their children are not compelled to attend during those exercises. This is the most serious subject of controversy in England on the relation of church and state.

In the provided schools, which belong entirely to the public, the law states that any denomination may employ a religious teacher to give instruction in the school building to the children of their faith.

after school exercises. This is obviously unsatisfactory.

It is well-nigh universally recognized that religious and moral instruction for the young is of supreme importance, and also that, sad to say, many parents are not qualified to give it in their own homes. Sunday-school meets only once to the day school's five times, and many children do not attend the Sunday-school at all. What satisfactory solution the world will ultimately adopt is not yet apparent.

Education in Scotland and Ireland. Scotland has had general elementary education for a much longer period than England, which goes far to account for the extraordinarily large proportion of her small population who have attained high success in all parts of the world. In Ireland the poverty of the people and the unfortunate religious controversies which have divided them and the government have checked popular education; but progress is now being made along lines in general similar to those we have sketched for England.

CHAPTER XXXII

ARISTOCRACY AND DEMOCRACY

Complexity of English Society. Society and life are much more formal and complex in England, as in all old countries, than in the United States. This is partly due to the fact that with long time many of their ideas, customs, and institutions have become solidified into a firm system, influencing all relations and impeding the free manifestation of individuality.

Social Classes. The most characteristic feature of this rigid social system is the hereditary nobility. This is simply the topmost layer of an intricate system of class distinctions extending to the lowest stratum, each acknowledging its social inferiority to that above and with a more decided arrogance than is observed in a country like the United States maintaining its superiority over the one next below.

Under royalty are the nobility, numbers of them

connected with the royal family. The younger members and relatives of these noble families are also of the aristocracy, though not of the nobility. The knighthood are above the ordinary citizens in social standing, but not so exalted as the untitled relations of the great noble families. Next come the upper middle class, consisting of prominent lawyers, large financiers, eminent professional men in all lines, wealthy merchants, and large landowners. Of course members of the nobility and aristocracy may engage in any business or profession. Many of them are found in the higher financial and professional pursuits. The lower middle class consists of men of less success and wealth in the same pursuits as those that make up the upper middle class, together with such men as clerks, salesmen, etc., of the better sort. The yeomanry consists of the substantial farmers below the large landowners.

The rest of society is spoken of in a general way as the lower classes, though subdivided into a number of groups. First come the artisans, or skilled mechanics, of all sorts; next the unskilled common labourers, and below them the unfortunate shiftless mass ending in the criminals and paupers.

It is of course understood that none of these classes enjoys any legal position or privilege, except that of the lords and their wives to be tried for serious crimes by their peers; but even then the

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penalty is the same as for the lowest pauper.¹ Even the word gentleman has no definite social, to say nothing of legal, definition.²

The stiff structure of these social classes has a strong influence in determining advancement in business, professions, and politics, and all the thousand phases of social life. But marked ability will raise a man from the lowest to the highest station. There have been Cabinet Ministers who began life as manual toilers, and there are said to be lords whose grandfathers were labourers. When Lloyd-George became prominent in politics, it was commonly stated that his father was a poor Welsh miner; when he entered the Ministry, it was discovered that his father was a humble school-teacher; and when he rose to be the most influential man in England, the genealogists reported that his paternal predecessor was "a poor but respectable attorney." What sire will be supplied him now that he has been summoned to the premiership to save his country from threatened ruin, imagination awaits with interest. Perhaps they will discover that, like heroes of old, he is a son of the gods, which after all is not a bad explanation.

¹ Peers enjoy a certain immunity from arrest and several other distinctions of slight moment, which may be looked up in any modern edition of Blackstone.

² The idea that right to a coat of arms is necessary in England to constitute a man technically a gentleman is entirely groundless.

Nevertheless, the presumption is felt to be much in favour of the man of the upper class, and a man of ambition seeking to rise is not so freely encouraged as in the United States. This spirit causes many men of moderate abilities to remain, without effort on their part, or the ability which could have placed them there on merit, in the upper class in which they were born; but it also saves an immense amount of fruitless striving and sour disappointment and jealousy on the part of those whose talents prove unable to support their ambitions.

Forces for Social Unity. Though the classes are firmly set, yet they are not castes compelling one to remain in the station of his birth. Even the nobility is being constantly recruited by men who have achieved the highest eminence in war, science, art, literature, business, etc. Moreover all the daughters of a nobleman and all the sons except the eldest are legally commoners. To these considerations has been added the mutual respect of men and women of all sorts of standing at the common heroic sacrifices in factory, hospital, and field since 1914. These all prevent the English nobility from being spoiled by the arrogance and narrow class feeling of the aristocracies of the continent of Europe or from being hated by the common people.

The Governing Class. Associated with the idea of an aristocracy is that of a governing class. This

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is fairly well defined, not in the sense that they possess any special legal privileges, but in the sense that they are willingly recognized as such by the masses of the people. Since this governing class is sharply divided into two parties, each of them bids heavily for the support of the masses by promising laws for popular benefit. England thus presents the strange spectacle of a country whose government is conducted by the wealthy and aristocratic classes, and yet has upon its statute book more laws for the benefit of the masses than many countries of a much more democratic society.

The governing class is generally recruited from the aristocracy and the wealthy business and professional classes and from men of independent income. Not all members of these classes care for public life; but with a large proportion of them, politics are of absorbing interest, for success in which they are willing to spend large sums without any prospect of financial reward. As Professor Lowell remarks,¹ office is rarely if ever used to obtain wealth, but wealth is freely used as a means of obtaining office. Whether this attitude of the governing class has back of it a sort of semi-consciousness that the perpetuity of the whole social and economic structure which they find so agreeable depends upon their retention of power, would be an interesting question.

¹ II., 510-11.

Politics as a Profession. Men of political ambition usually enter Parliament in early life. They thus acquire a lifelong training which gives them an immense advantage both in the mastery of the details of public business and in the competition for the higher political positions.

Defects of the System. As great as are the benefits flowing from the conduct of the government by a recognized governing class, there are also certain disadvantages. It is largely responsible for the undemocratic character of the educational system, the undemocratic privileges of the established church, and the many undeserved advantages conferred on the fortunate by the firmly graded social system; and it doubtless fosters in the common people such a degree of reliance upon their "betters" as to be unfavourable to the growth of self-direction and democratic equality of opportunity. Whether the masses will continue to support the system which gives them efficient and honest government and confers many special aids upon the poor and which they can at any time rebuke or overthrow by their ballots, or whether with the growth of self-reliance as fostered by the trade unions and a higher grade of general education they will insist upon putting men of their own class into possession of the offices, is a question which only the future can decide. Certainly there appears but slight tendency in that direction at present.

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Undemocratic Features. Though England has felt the wave of modern democracy very powerfully, she yet exhibits many features in addition to those already described that are directly opposed to democracy. Chief of these is the ownership of the land by a small number of landlords.¹ About fourteen hundred persons own half the land in England, and in Scotland and Ireland the concentration of ownership has been still more decided, though in Ireland great improvement has been wrought by the land purchase acts. The vast rents of these lands maintain in ease hundreds of very wealthy men whose existence is of no benefit to the country. The reply that the class as a whole is of immense benefit by setting standards of conduct, social propriety, and public service, is far from convincing to persons not directly the beneficiaries of privilege.

Democratic Features. There are, however, certain features of the government of England as distinct from its society that are decidedly democratic. Partly in a sincere desire to help the masses and partly in bidding for party success, Parliament has

¹ It has been stated, on figures of Lord Derby's investigation in 1874-5, that 525 peers own 15,303,165 acres of the 48,000,000 acres of cultivated land in Great Britain and Ireland, and 5,000,000 acres of uncultivated land, thus making an ownership of 20,303,165 acres of the total 77,750,000 acres of the entire area of the United Kingdom. The number of acres transferred to small farmers of recent years, said to approximate half the area of Ireland, must be deducted from these aristocratic holdings.

passed a number of laws such as old-age pensions, laws forcing employers to compensate injured workmen without lawsuit, etc., while the Councils of large cities have done much in providing cheap gas, better homes, and other benefits for the poor.

American democracy, in its ruling idea of an equal chance for everyone, cultivates a decided individualism, guarantees a career to ability, no matter where born, and largely neglects the welfare of the great mass of commonplace poor who can never hope to rise above their surroundings. England's democracy emphasizes the other side, and in its attempt to make the life of the permanently poor as comfortable and safe as possible, tends towards paternalism and the decline of vigorous self-reliance. A combination of the two tendencies would be better than either alone.

Supremacy of the Voters. A still more important circumstance making for democracy is the fact that in England there is no written constitution requiring elaborate processes and extra majorities for amendment, by which the will of a few men long since dead may today defeat the will of a majority of millions now living. A government of checks and balances, like that of the United States, may in the long run be safer and wiser; but the defeat of the popular will by these checks and balances is certainly undemocratic.

The English idea, which is fast growing into a custom, of ordering a parliamentary election whenever the Ministry becomes notably weak, and the fact that a defeated Ministry must immediately resign instead of holding on for two or four years contrary to the recently expressed preference of the people, as frequently with executive or Senate in the United States, also assures the supremacy of the popular will beyond what is possible under the American system. The recent movement in the United States for the initiative, referendum, and recall indicates a desire to establish for the people a more effective means of immediate control.

Unequal Size of Election Districts. The fact that parliamentary election districts vary much in relative population is of not near such significance as is the variation in population of American States; for the large and small districts in England do not differ nearly so much as do the States of the American Union, and are so thoroughly scattered over the country as to average up between different sections and parties. In this country, however, not only is the disproportion of population between small and large States much more decided, but the sparsely settled States are largely concentrated in the West and South, making it possible for a small minority of the population of the country situated in these sections to dominate the United States Senate.

However wise some persons might think, it is certainly the very opposite of democratic that 80,000 people in Nevada can nullify through their two Senators the votes of 9,000,000 people in New York; nor does any reason appear for supposing that Nevada will regularly produce wiser voters or greater Senators than the one hundred and twelve times more populous State of New York, whose people have the constant training of managing the vast interests and responsibilities which crowd upon one of the world's greatest commercial and industrial centres.

Since every State is guaranteed by the Constitution equal representation in the Senate, we may be forced in time to defeat that undemocratic arrangement in some such manner as in England they have done with the Lords, by enacting that any bill shall become law when passed by a two-thirds vote by two succeeding lower houses and signed by the President, without the consent of the Senate. When we marvel at the submission of the English to the undemocratic features in their institutions, let us remember that it is this undemocratic Senate, and not the more representative House, that commands the greater power in our government and generally the greater respect and confidence of the people.

CHAPTER XXXIII

LESSONS ENGLAND CAN TEACH US

Flexibility and Progress. Notwithstanding the differences in circumstances between England and the United States, there are several important lessons in government that our old teacher can still give us. One reason that England has been the pioneer in self-government is the flexibility of her unwritten constitution. In spite of some dangers that attend it, this leaving Parliament unfettered allows the fullest freedom in meeting new needs by the best methods. It is astonishing to observe what a large proportion of the highest intellectual effort in the history of American legislation has been consumed in proving not that proposed measures are good or bad, but that they are constitutional or unconstitutional. Thus the English constitution is in continual gradual change, and new social and economic problems are being experimented upon with a freedom which is not possible under our rigid written constitution.

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Co-operation of Legislature and Executive. One of the most important lessons for us is the benefit to be derived from a closer co-operation between the legislative and executive departments. It is common both in our State and national governments to see such serious quarrels between these two essential agents in the making of our laws as to lead for a considerable time to an almost complete stoppage of important legislation. Though most competent authorities agree that Cabinet government would not be best for the United States, that is no reason for the extreme separation of legislative and executive from which we suffer. Much can be done to make the co-operation between the two departments more effective without adopting the entire English system or impairing the valuable features of our own. The deadlocks, as well as innumerable less serious failures of co-operation which it is so desirable to avoid, are often due to misunderstandings between the departments, to ignorance of some of the circumstances, or to misjudging the motives of one by the other. Nothing equals personal consultation for the removal of such difficulties. The framers of the Confederate Constitution, judging from the experience of seventy years under that of the United States, provided that Cabinet officers might speak, but not vote, in Congress. This could be permitted under the United States Constitution.

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~~It would not only give legislation greater unity, but would lead to the selection of stronger men for Cabinet positions.~~ If it is thought that this would weaken the position of the President, it could be arranged for him also to appear on the floor of Congress. President Wilson has done much to improve the machinery of legislation by returning to the practice of Washington in delivering his important messages in person; and sooner or later this co-operation in one way or another will doubtless be carried further. The fact that we have delayed this reform so long is doubtless in large measure due to the deeply ingrained feeling of hostility to the interference of the executive derived from the experience of the colonies with George III.

A Budget Committee. A reform in Congressional finance, the need of which is generally recognized, is some plan by which expenditure and income can be kept in closer agreement. The extent to which steps have been taken in American national, State, and city governments towards adopting some such economical plan as the English budget system is described at page 142. Only the prodigal wealth of our national government and the desire of certain powerful interests to keep expenditure up to a high figure have prevented our long ago ending the present shiftless and wasteful system.

The Civil Service. We have in part removed the

civil service from the spoils system; we should follow the example of England and other leading European countries and free it entirely from the blight of partisan politics and political corruption.

We could also elevate the quality of the men and women in our civil service if we adopted the English idea of testing their general character, education, and ability, rather than their immediate preparation for the positions for which they apply. The Dutch abandoned the latter system after many years' experience, because it failed to secure men of permanent value, and adopted the English plan, based upon the idea of securing men and women capable of developing into strong public servants of permanent value.¹ Our civil service already suffers from the presence of many men of excellent preparation for one task, but without the originality or force which is necessary to permeate the government service with the adequate enlightenment and progress.

Purity in Politics. While the day is past when a leader in the United States Senate would publicly proclaim that "purity in politics is an iridescent dream," or another in the same position scoff at civil service reform as hypocritical scoundrelism,²

¹ Lowell, ii., 516.

² John J. Ingalls is the first-named case; Roscoe Conkling is the other.

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yet we are far short of the ideal. Several generations ago politics in England were more corrupt than anywhere now in America except the very worst spots. Yet today public sentiment and law have been so far improved that corruption is much rarer than in our country, many writers even going the unwarrantable length of saying that it is non-existent. England's accomplishment of this task under conditions in some respects more difficult to overcome than those which confront us should inspire Americans to remove every stain of corruption from our elections and public officials. Especially should we break, as they have done, the power of the great corporations in politics.

Log-Rolling. The practice of one member or group of members agreeing to help another with their bill in return for similar favours is known as log-rolling, from the frontier habit of neighbours helping each other in clearing their fields or forests. But unhappily political log-rolling is not so legitimate a form of co-operation as the agricultural, for the reason that it is generally resorted to in order to secure the passage of laws which could not get a majority on their merits. So long as our economic and legislative system remains as it is, we cannot escape this evil entirely; but our people and public men alike should employ every means possible of discouraging this semi-corrupt practice.

The lesson of united executive responsibility and the control by State authority over the administrators of commonwealth law which English experience holds for our State governments is one of the most useful and impressive of any she can teach. This has been so fully treated above on pages 253-6 as not to require repetition here.

Regard for Law. Finally, England can teach us very effectively the lesson of regard for law. Certain forces in our development have led high and low, rich and poor alike, to treat law with slight regard when it crosses their own self-will or greed. The rate of homicide in the United States as a whole is six or seven times as great as in England, and in some States twenty times as great, while many of our trust magnates have been as flagrant in their contempt for all legal authority as bandits or train robbers. Too often our courts have not seriously cared; for the current disregard for the sacred rights of individuals has so permeated them along with the rest of the community at large that juries acquit of the most heinous crimes, judges frequently impose almost farcical sentences on desperate criminals, and even State supreme courts often foster crime and injustice by reversing long and expensive proceedings in which a just verdict has been at last obtained because of some trifling technicality not affecting the merits of the case in the remotest

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degree.¹ We might well follow the example of the country from which we derived our law and government by making the one a terror to the evil-doer and the other a protection beneath which all good citizens may feel secure.

And lastly, let us feel about our government, as the Englishman does about his, that it is the greatest and wisest and freest in all the world, and that it must never be dishonoured by falling into the hands of self-seeking and dishonourable men.

¹ A French critic says that many American officials seem to have adopted that part of the motto of the Japanese monkeys that says, "See no evil; hear no evil."

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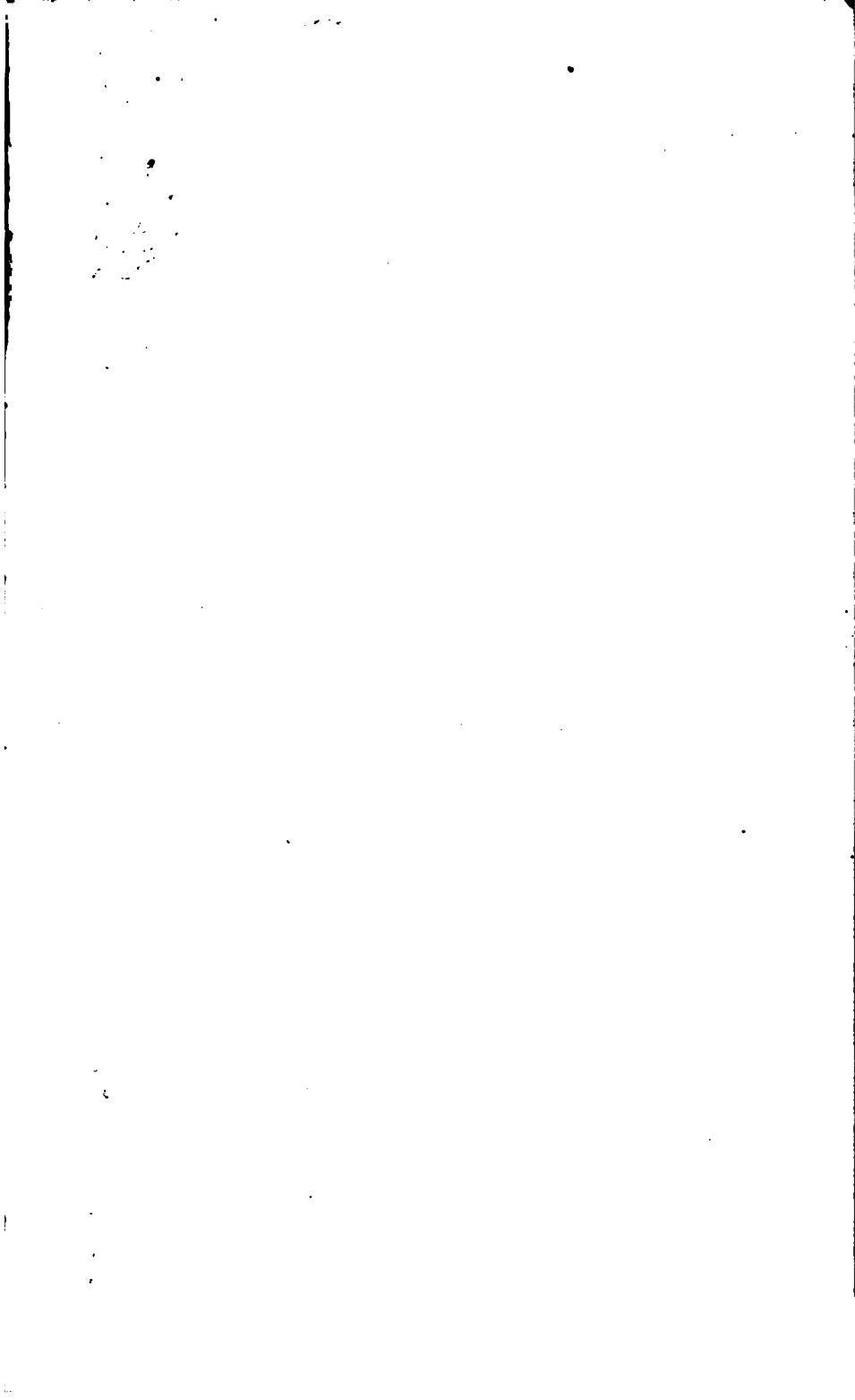
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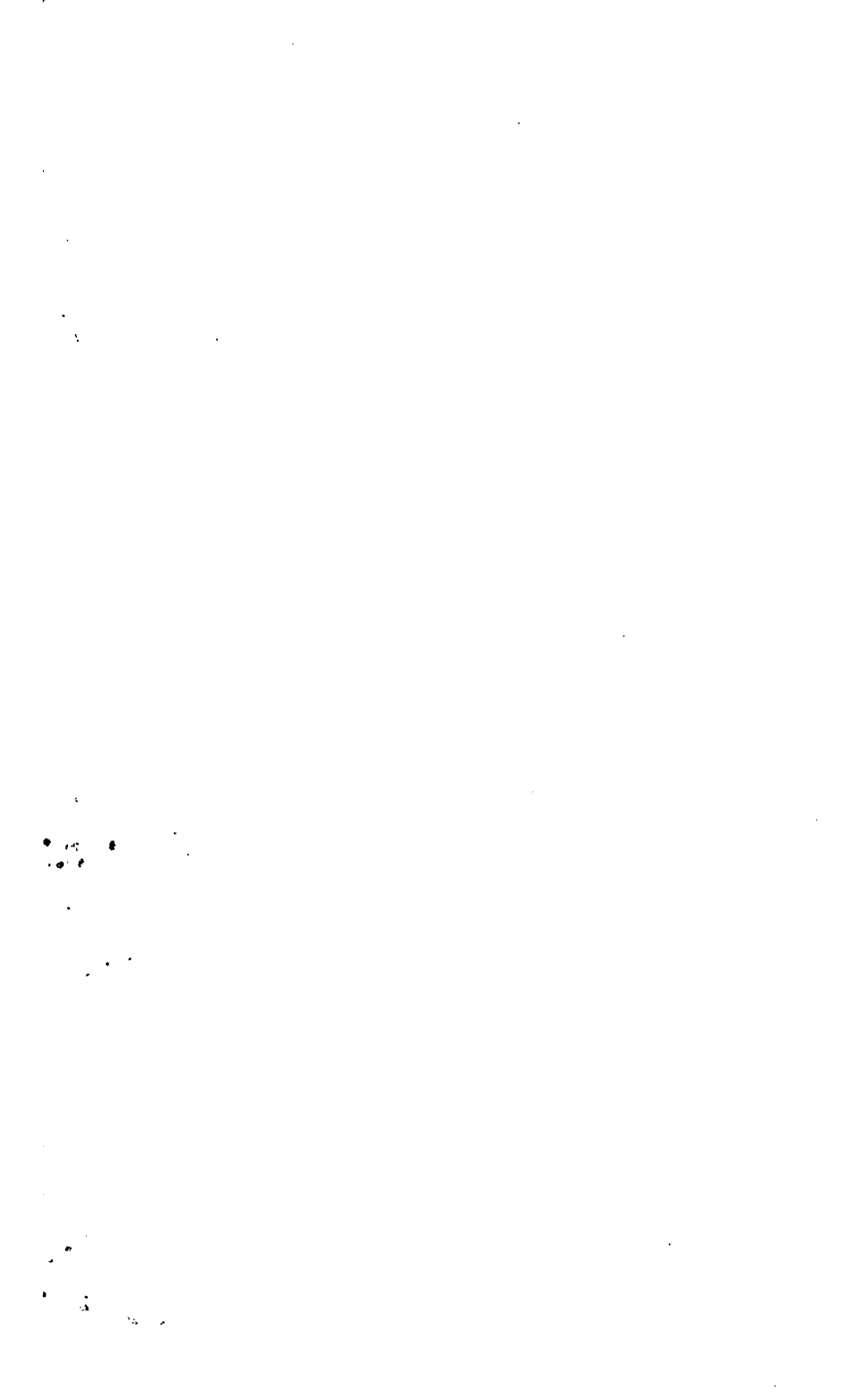
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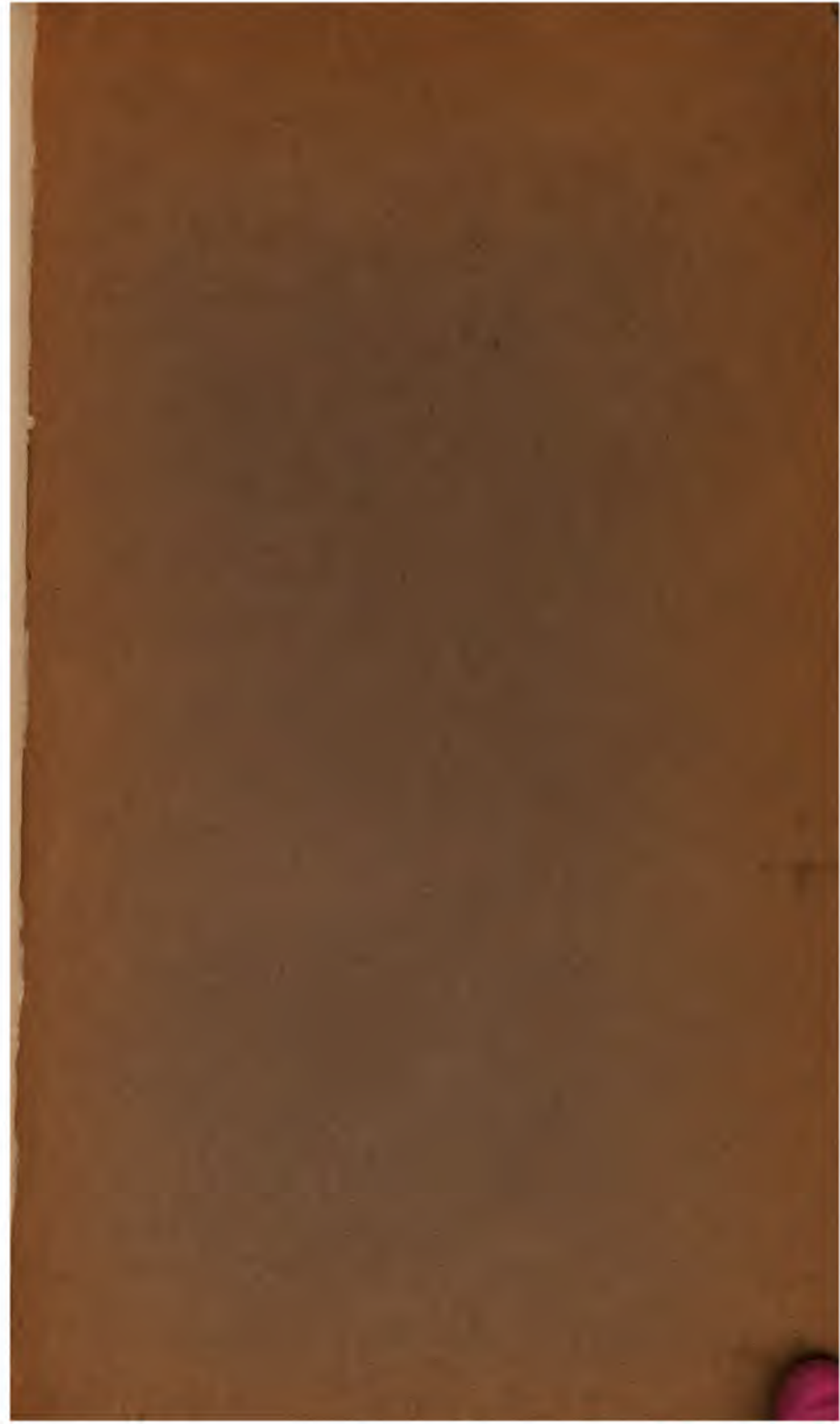
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